United States Court of Appeals

for the Second Circuit



APPELLEE'S APPENDIX

ORIGINAL

Docket No. 74-1416

IN THE

United States Court of Appeals

For the Second Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

—*vs*—

RAYMOND LEO COWLES,

Defendant-Appellant.

On Appeal from the United States District Court
Northern District of New York

APPENDIX FOR APPELLEE,
UNITED STATES OF AMERICA

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UNITED STATES COURT OF APPEALS
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INDICTMENT.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

- against -

RAYMOND LEO COWLES

INDICTMENT

Criminal No. 73-CR-167

Vio: 18 U.S.C. §§371, 2113(a), (b), (d), 2.

COUNT I

THE GRAND JURY CHARGES:

On or about August 30, 1973, in the Northern District of New York, at Pamelia, New York, RAYMOND LEO COWLES and John Doe, a person whose name is to the grand jurors unknown, by intimidation, did take from the person and presence of Alice A. Kingsbury, Katherine J. Olszewski, and Myrna Cauley, about $36,640.00 in money, belonging to and in the care, custody, control, management and possession of the Marine Midland Bank-Northern, the deposits of which were then insured by the Federal Deposit Insurance Corporation.

In violation of Title 18, United States Code, Sections 2113(a) and 2.

COUNT II

THE GRAND JURY FURTHER CHARGES:

On or about August 30, 1973, in the Northern District of New York, at Pamelia, New York, RAYMOND LEO COWLES and John Doe, a person whose name is to the grand jurors unknown, did take and carry away, with intent to steal and purloin, from the Marine Midland Bank-Northern, the deposits of which were then insured by the Federal Deposit Insurance Corporation, the sum of about $36,640.00 belonging to and in the care, custody, control, management and possession of the said bank.

In violation of Title 18, United States Code, Sections 2113(b) and 2.

COUNT III

THE GRAND JURY FURTHER CHARGES:

On or about August 30, 1973, in the Northern District of New York, at Pamelia, New York, RAYMOND LEO COWLES and John Doe, a person whose name is to the grand jurors unknown, did take and carry away, with intent to steal and purloin, from the Marine Midland Bank-Northern, the deposits of which were then insured by the Federal Deposit Insurance Corporation, the sum of about $36,640.00 belonging to and in the care, custody, control, management and possession of the said bank, and RAYMOND LEO COWLES and John Doe, in committing the aforesaid offense, did put in jeopardy the lives of Alice A. Kingsbury, Katherine J. Olszewski, and Myrna Cauley, by means and use of a dangerous weapon, that is, a gun.

In violation of Title 18, United States Code, Sections 2113(d) and 2.

COUNT IV

THE GRAND JURY FURTHER CHARGES:

On or about August 30, 1973, in the Northern District of New York, at Pamelia, New York, RAYMOND LEO COWLES and John Doe, a person whose name is to the grand jurors unknown, wilfully and knowingly did combine, conspire, confederate, and agree together and with each other to commit the following offense against the United States of America:

1. To take and carry away, with intent to steal and purloin, from the Marine Midland Bank-Northern, the deposits of which were then insured by the Federal Deposit Insurance Corporation, money belonging to and in the care, custody, control, management and possession of the said bank, in violation of Title 18, United States Code, Section 2113(b).

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, RAYMOND LEO COWLES and John Doe performed the following overt acts:

1. The allegations set forth in Counts I, II, and III hereinabove are realleged.

2. On August 30, 1973, RAYMOND LEO COWLES and John Doe did drive to, and park outside, the Marine Midland Bank-Northern, Pamelia, New York.

In violation of Title 18, United States Code, Section 371.

A TRUE BILL

FOREMAN OF THE GRAND JURY

UNITED STATES ATTORNEY

Excerpts of Proceedings, dated 11-21-73.
Transcript containing findings and conclusions of Chief Judge James T. Foley on motion to suppress eyewitness identification evidence.

* * * * *

he said that he was satisfied of the line-up.

Mr. Clary refers to Mrs. Schultz identifying an individual from a photograph, Your Honor, other than the defendant Cowles. Now that clearly indicates that there was no suggestion on anyone's part that the men in the line up was the man in the composite picture. The government submits neither the photograph displayed or the line-up showed any impropriety or was in any way suggestive.

THE COURT: For the benefit of the Court of Appeals, I went over my notes last night after the testimony yesterday, and I listened to the witnesses this morning, and I am ready to read my decision into the record and it is this.

That from the testimony made before me yesterday and this morning, there was no indication in any respect that there was any impermissible suggestive procedures used by the law enforcement agencies, State and Federal involved in the identification procedures. The proof shows that at no time during the exhibition of the photographs to potential witnesses was there any suggestiveness of any

kind on the part of the law enforcement people or anyone else who might have been on the scene, when the photographs were exhibited prior to or at the time the photographs were viewed.

I find the photographs in each instance were handed in groups to the person who was to look at them and there was no devious methods used or conversations that transpired to lead the person examining to select a particular photograph.

The line-up procedures in the Jefferson County Jail frankly were really eye-opening to me. I have had many cases involving identification, but never heard of this particular procedure. What occurs there was an exemplary procedure and probably could be a model for this type of investigative line-up.

There were no conversations I find prior to the actual line-up procedures used to influence the people who were going to look through this viewing window at the people in the line-up, and there was nothing suggestive again in any respect as to the person to be

Excerpts of Proceedings, dated 11-21-73.
Transcript containing findings and conclusions of Chief Judge James T. Foley on motion to suppress eyewitness identification evidence.

selected by the viewer as the driver of the car involved in this robbery.

Most important during this line-up was the presence of an attorney at least who was interested in behalf of the defendant Cowles, and who was present and given freedom all during the line-up, was allowed to eliminate certain persons from it, and in fact helped arrange part of the setting which the other persons were to view.

Those persons were lined up and in my judgment that is a sufficiently large group to overcome any suspicion of a rigged line-up in order to make this defendant Cowles stand out.

I find nothing of any impermissible suggestive nature occurred in the line-up viewing.

Therefore, in accord with the principles of Simmons vs. United States-- that is the leading case-- 390 U.S. 377, and a number of Court of Appeals Second Circuit cases cited and discussed in the trial memorandum of the government, I find and conclude that there were no impermissible suggestive procedures on the

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part of anyone in those out of court identifications by photographs and line-up viewing.

It is my judgment also from the testimony, and I give credibility toward the Government's side of this issue, that there is no likelihood of illegal mis-identification at the trial. That is my conclusion, that there was nothing illegal or improper in the photograph showings and line-up. Such procedures I find from the testimony were fair and unprejudicial to the rights of this defendant who is now on trial.

The motion of the defendant made in writing and filed with the Clerk to suppress the identification testimony has not been supported factually and must be and is denied and dismissed as a matter of law.

So that decision should be transcribed and filed and made part of the record.

Now I assume we are ready.

MR. CLARY: May I have an exception, Your Honor?

THE COURT: Yes, sir.

MR. CLARY: Thank you.

* * * * *

Proceedings, dated 2-4-74. 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -
-UNITED STATES OF AMERICA -
- -
- -against- -
- -
-RAYMOND LEO COWLES -
- -

The following proceedings took place on the 4th day of February 1974 at the United States District Court Federal Building, Utica, New York, before HONORABLE LLOYD F. MAC MAHON, United States District Judge and a Jury.

A P P E A R A N C E S:

JAMES M. SULLIVAN, JR.
United States Attorney
GEORGE LOWE
Assistant United States Attorney
Of Counsel
Attorney for United States of America
Federal Building
Syracuse, New York

LEE CLARY, ESQ.
Attorney for Defendant
316 Sherman Street
Watertown, New York 13601

THE CLERK: United States of America against Raymond Leo Cowles.

MR. LOWE: The Government is ready.

MR. CLARY: Defendant is ready.

THE COURT: Proceed.

(A panel of 12 jurors was drawn.)

THE COURT: Would all the members of the panel who haven't been drawn, pay careful attention to what I say and the questions that I ask so that in the event that one of you is drawn to replace one of those now in the box, it won't be necessary for me to repeat.

Can you all hear me back there?

This is a criminal case in which a grand jury for this district has indicted the defendant Raymond Leo Cowles for bank robbery and for stealing money from the bank and for putting the lives of certain of the bank personnel in jeopardy.

The indictment contains three Counts. The bank involved is the Marine Midland National Bank at Pamelia, New York.

I am sure that you all -- and the crime is alleged to have occured back in August of 1973.

I am sure that you all realize that the mere fact that a person has been indicted simply means that he has been accused of a crime, and that under our system

of law it is no evidence of his guilt whatever. On the contrary, he is presumed to be innocent, and that presumption remains with him even throughout your deliberations.

I am sure you also understand that under our system of law the Government is required to prove the defendant's guilt beyond a reasonable doubt, and that the defendant is not required to offer any proof of his innocence.

Now are all of you willing to accept and to apply those principals of law in this case?

And I would like the rest of you back there to make mental notes of your answers to the questions so that if you are drawn I will simply ask you if you have anything to say in answer to any of the questions.

Are any of you customers or depositors or borrowers or have any business relationship at all with the Marine Midland Bank in Pamelia?

JUROR: I am an employee of the Marine Midland Central.

THE COURT: Are any of the rest of you, do you have any relationship with Marine Midland Bank wherever it is located?

Do you feel, sir, that you could sit here and be fair and impartial since you are an employee of the

bank?

JUROR: I would like to think so, yes.

THE COURT: You think you could?

JUROR: Yes.

THE COURT: Do you have anything to do with this particular branch of the bank?

JUROR: No.

THE COURT: Do you know any of the personnel there?

JUROR: No.

THE COURT: What is your position with the bank?

JUROR: I am a Credit Adjuster.

THE COURT: Do you have anything to do with passing on the loans of the branch of -- of the branch banks?

JUROR: No.

THE COURT: Where is your office?

JUROR: In Utica.

THE COURT: Do you know any of the personnel involved in the bank in Pamelia?

JUROR: No.

THE COURT: Do you know in particular Alice Kingsbury, Catherine J. Olsweski and Myrna Cauley.

JUROR: No sir.

THE COURT: I think if the defense has no objection, if the Government has no objection, it would be better to excuse you in view of your relationship with the bank.

MR. CLARY: No objection.

MR. LOWE: No objection.

(Juror excused and his seat was filled.)

THE COURT: Mr. Halenar, do you have anything to say in answer to any of the questions I have asked of the panel so far?

JUROR HALENAR: No, sir.

THE COURT: Have any of you ever served on a Grand Jury of any kind?

JUROR NO. 11: Yes.

THE COURT: Where?

JUROR NO. 11: In Fulton County.

THE COURT: When?

JUROR NO. 11: July of last year.

THE COURT: In that capacity did you have occasion to hear evidence relating to the crime of robbery?

JUROR NO. 11: Yes.

THE COURT: Anything in that that would influence you here in any way?

JUROR NO. 11: No.

THE COURT: You feel that although you have served on a State Grand Jury, was it, County Grand Jury?

JUROR NO. 11: County, yes.

THE COURT: That you could sit here and be fair and impartial and base your opinion on the evidence you hear in this case?

JUROR NO. 11: Yes.

THE COURT: And on nothing else?

JUROR NO. 11: Yes.

THE COURT: Have any of you ever worked for any law enforcement agencies?

JUROR NO. 6: Rome City for a short period.

THE COURT: For the Police Department?

JUROR NO. 6: That's right.

THE COURT: What did you do there?

JUROR NO. 6: Police Matron.

THE COURT: Anything in that experience which would in any way influence you here?

JUROR NO. 6: No way.

THE COURT: Do any of you have any close relatives who work for any law enforcement agency?

JUROR NO. 6: My son and son-in-law.

THE COURT: Are both policemen?

JUROR NO. 6: One in Vermont and one in Rome.

THE COURT: Is that -- is there anything in

that fact which would influence you here in any way?

JUROR NO. 6: Not in my opinion.

THE COURT: Do you discuss their work with them from time to time?

JUROR NO. 6: In a casual way, but specifics, no.

THE COURT: You feel quite sure you could sit here and be fair to this defendant?

JUROR NO. 6: I would try, and I believe so.

THE COURT: Do you have any reservations about it at all?

JUROR NO. 6: None whatsoever.

JUROR NO. 11: I have a son-in-law that is a detective in the Los Angeles Police Force.

THE COURT: Do you see him often?

JUROR: I have only met him once. They only got married a year ago. I expect to see him this summer.

THE COURT: Hopefully.

JUROR NO. 11: Yes, on vacation.

THE COURT: Is there anything in that fact which would influence your decision here in any way?

JUROR NO. 11: No, because I would never discuss anything about his business.

THE COURT: All right.

JUROR NO. 8: I have a brother-in-law that is

a policeman.

THE COURT: Anything in that fact that would influence you here?

JUROR NO. 8: No sir.

THE COURT: Either way?

JUROR NO. 8: No.

THE COURT: Anyone else?

JUROR NO. 7: I have a brother-in-law, he is a Deputy Chief of Rome.

THE COURT: Anything in that fact that would influence you here?

JUROR NO. 7: I hope not.

THE COURT: You think it might?

JUROR NO. 7: I couldn't tell.

THE COURT: I think I will have to ask you to be excused unless you can be absolutely sure that it would not. I will excuse you.

JUROR NO. 7: I see him quite often.

THE COURT: All right, Iwill excuse you.

(Juror No. 7 was excused and another juror drawn.)

THE COURT: Is it Mrs. Baker?

MRS. BAKER: Yes.

THE COURT: Have you heard what I said so far?

MRS. BAKER: Yes.

THE COURT: Do you have anything to say in answer to any of the questions that I have asked?

MRS. BAKER: No.

THE COURT: Have any of you ever served on a trial jury in a criminal case before?

JUROR NO. 3: Yes.

THE COURT: Is there anything in that fact that would influence you in this case?

JUROR NO. 3: No, sir.

THE COURT: When did you last serve?

JUROR NO. 3: One year ago sir.

THE COURT: Here?

JUROR NO. 3: No, it was Oneida County.

THE COURT: Have any of you ever been victims of a robbery of any kind or of a theft?

Have any of you ever been assaulted in any way that instilled fear of physical harm?

Have any of you had any close relatives who have been the victims of a robbery or of a theft or of an assault?

Do any of you know of any reason why you couldn't serve on this jury and be fair and impartial and base your verdict on the law and on the evidence, the evidence as you hear it in this Court Room and the law as the Court instructs you in its charge to you at

the conclusion of the case?

Mr. Willoughby, could you tell me what you do?

MR. WILLOUGHBY: I work at the Chicago Pneumatic Tool Room.

THE COURT: And Mr. Barnes, what do you do?

MR. BARNES: Pardon?

THE COURT: Barnes, is that your name?

MR. BARNES: Yes.

THE COURT: What do you do?

MR. BARNES: I work at Scolotta Foods in Little Falls.

THE COURT: And the next juror?

JUROR: I work for Utica Floor Maintenance Company, sales representative.

MR. STRZEPEK: Machinist, Chicago Pneumatic Tool Company.

THE COURT: Mr. Willis?

MR. WILLIS: Retired.

THE COURT: What did you do?

MR. WILLIS: Auto mechanic.

THE COURT: Where?

MR. WILLIS: Niagara Mohawk.

THE COURT: And Miss George?

MISS GEORGE: I am retired from the State Mental Hygiene.

THE COURT: What does your husband do?

MISS GEORGE: He is retired also.

THE COURT: From where?

MISS GEORGE: Truck operator.

THE COURT: And Miss Baker, what do you do?

MISS BAKER: Telephone operator.

THE COURT: And your husband?

MISS BAKER: I am a widow.

THE COURT: What was your husband's occupation?

MISS BAKER: He was a metallurgist.

THE COURT: And Mr. Brewer, what do you do?

MR. BREWER: I am a manager of a housing development.

THE COURT: And Mrs. Baiamonte, what do you do?

MRS. BAIAMONTE: I keep house for my daughters, I am retired.

THE COURT: What does your husband do?

MRS. BAIAMONTE: He doesn't live to home.

THE COURT: Mr. Gomulke?

MR. GOMULKE: Manager of Computer Operations, Mohasco.

THE COURT: Mrs. Baker?

MRS. BAKER: I am just a housewife.

THE COURT: And your husband?

MRS. BAKER: He is on compensation and he was

a glove cutter.

THE COURT: And Mr. Hannon?

MR. HANNON: I am a Supervisor in Niagara Mohawk Power Corporation.

THE COURT: Thank you.

THE CLERK: Challenges for cause, Government?

MR. LOWE: Government has none.

MR. CLARY: None.

THE CLERK: Peremptory.

MR. CLARY: Your Honor, I did not hear where Mr. Willis was formerly employed.

THE COURT: Could you tell us again?

MR. WILLIS: Niagara Mohawk Power Company.

(Counsel exercised challenges and the box was filled.)

THE COURT: Mrs. Ball, you have heard what I said?

MRS. BALL: Yes.

THE COURT: Do you have anything to say in answer to any of the questions that I have asked the others?

MRS. BALL: I do not.

THE COURT: What do you do Mrs. Ball?

MRS. BALL: I am a housewife.

THE COURT: And what does your husband do?

MRS. BALL: He is a lawyer.

THE COURT: Where does he practice?

MRS. BALL: He maintains an office in Utica, but he only practices weekends. He is at the present time Chairman of the State Bingo Commission.

THE COURT: Has he ever practiced criminal law?

MRS. BALL: He has a general practice.

THE COURT: Does he do trial work?

MRS. BALL: Not at the present time anymore, no.

THE COURT: When did he last do trial work?

MRS. BALL: About twelve years ago.

THE COURT: Does he discuss cases with you?

MRS. BALL: Well, maybe very generally.

THE COURT: Do you feel that you could serve here and not discuss this case with him in any way?

MRS. BALL: Yes, I could do that.

THE COURT: Do you know of any reason why you couldn't serve here and be fair and impartial?

MRS. BALL: I do not.

THE COURT: Base your verdict on the law as the Court gives it to you?

MRS. BALL: That's right.

THE COURT: And Mrs. Freeman, do you have anything to say in answer to any of the questions?

MRS. FREEMAN: No, sir.

THE COURT: What do you do?

MRS. FREEMAN: I work at the Country Club in Norwich.

THE COURT: What does your husband do?

MRS. FREEMAN: Works for Bendix Corporation.

THE COURT: Do you know of any reason why you couldn't serve here and be fair and impartial, base your verdict on the law and the evidence in this case?

MRS. FREEMAN: No.

THE COURT: And Mrs. Burton?

MRS. BURTON: Yes, sir.

THE COURT: Do you have anything to say in answer to any of the questions?

MRS. BURTON: No, sir.

THE COURT: What do you do?

MRS. BURTON: I am a housewife.

THE COURT: What does your husband do?

MRS. BURTON: My husband is a salesman.

THE COURT: With whom?

MRS. BURTON: Starlite Company, Harvard, Illinois, Dairy equipment.

THE CLERK: Challenges for cause?

MR. LOWE: Government has none.

MR. CLARY: Defense has none.

MR. CLARY: Your Honor, may we be permitted to ask the Jurors through yourself some questions?

THE COURT: Sure.

MR. CLARY: At what point? Before the challenges?

THE COURT: Do you want to come up and tell me what they are?

(The following proceedings took place at the bench out of the hearing of the jury.)

MR. CLARY: I would just want to ask the Jury that if it is our decision that the defendant not take the stand, if they would take that failure to take the stand as an inference of guilt or any inference at all.

THE COURT: No, I would decline to ask such a question. If you wish a request in the charge in that respect, the Court of course would give it if you ask for it, but not otherwise.

MR. CLARY: All right. My second question would be if the jury came to the conclusion that the prosecution had not proven the guilt of the defendant beyond a reasonable doubt, and a majority of the jurors believed otherwise, would the individual juror change his verdict because he or she was in the minority?

THE COURT: I decline to do that, that is inviting a mistrial.

MR. CLARY: And I would like to ask the jurors if a witness identified the defendant during the course of the trial, will they consider evaluating the testimony the length of time of observation, the distance between the witness and the defendant and the witnesses' capacity for memory in evaluating that testimony?

THE COURT: I decline to put such a question. It is improper on a voir dire. I would be happy to so charge the Jury on the issue of credibility if you will give me a written instruction to that effect.

MR. CLARY: There are two more, one would be to ask the Jury a question do they agree that the defendant should not be convicted of the crime of bank robbery unless he is identified as the guilty party beyond any possibility of error?

THE COURT: That would be an erroneous instruction as a matter of law, therefore I wouldn't ask the question.

MR. CLARY: And I would like to ask those jurors, the jury generally, if they would give any more credence to the testimony of a law enforcement officer than they would an ordinary witness merely because he is a law enforcement officer.

THE COURT: Again I would not put a -- such a question before -- I would not put such a question on the

voir dire. I would be happy to give such an instruction if you request it in writing in the charge.

MR. CLARY: And I would like one final one, do you think that the burden of the law places upon the prosecution to prove the defendant guilty beyond a reasonable doubt is too great a burden.

THE COURT: No, I decline to give that.

MR. CLARY: Exception.

(The following proceedings took place in the hearing of the Jury.)

THE COURT: Do any of you know anyone in the United States Attorney's Office, Mr. Sullivan or any Assistant, particularly Mr. Lowe who is representing the Government here?

And do any of you know Mr. Clary, the defense counsel. Will you stand up please Mr. Clary?

And do any of you know Mr. Cowles, the defendant?

I take it none of you do.

(The counsel exercised challenges and the Jury box was filled.)

THE COURT: And Miss Urtas, have you heard what I said so far?

MISS URBAS: Yes.

the court; Do you have anything to say in

answer to any of the questions?

MISS URBAS: No, I don't.

THE COURT: Do you know of any reason why you couldn't serve here and be fair and impartial?

MISS URBAS: No.

THE COURT: What do you do?

MISS URBAS: I am a clerk in classified documents center, General Electric.

THE COURT: Are you married?

MISS URBAS: Yes.

THE COURT: What does your husband do?

MISS URBAS: Presently he is unemployed, he is a Specialist, General Electric.

THE COURT: And Mr. Butler, what do you do?

MR. BUTLER: Salesman for Montgomery Ward.

THE COURT: Do you have anything to say in answer to any of the questions I have asked the others?

MR. BUTLER: No.

THE COURT: Do you know of any reason why you couldn't serve here and be fair and impartial and base your verdict on the law and evidence?

MR. BUTLER: Right.

THE CLERK: Challenges for cause?

MR. LOWE: None.

THE CLERK: Defendant?

MR. CLARY: None. Your Honor, I did not hear, I am sorry, maybe it is the distance, Miss Urbas said she was a classified Clerk?

THE COURT: At General Electric.

MR. CLARY: Where was her husband?

MISS URBAS: Inspector at General Electric.

(Counsel exercised challenges and the Jury box was filled.)

THE COURT: Mr. Burmaster, have you heard what I said?

MR. BURMASTER: Yes, I did.

THE COURT: And do you have anything to say in answer to any of the questions?

MR. BURMASTER: No, I don't.

THE COURT: What do you do?

MR. BURMASTER: I work for General Electric, I am in maintenance down there.

THE COURT: And Mr. Archibee, have you heard what I said?

MR. ARCHIBEE: Yes, sir.

THE COURT: Do you have anything to say in answer to any of the questions?

MR. ARCHIBEE: My house was broken into once and they stole a television and a few other things.

THE COURT: How long ago was that?

MR. ARCHIBEE: About 20 years ago.

THE COURT: Was there a criminal case brought as a consequence of that?

MR. ARCHIBEE: No, they never found out who done it.

THE COURT: Would that in any way prejudice you in this case?

MR. ARCHIBEE: No, it wouldn't.

THE COURT: You are sure you could sit here and be fair and impartial despite the fact you were once the victim of a robbery?

MR. ARCHIBEE: Yes, sir.

THE COURT: Would you start this defendant with a presumption of innocence?

MR. ARCHIBEE: Yes, sir.

THE COURT: And Miss Guckemus, have you heard what I said?

MISS GUCKEMUS: Yes.

THE COURT: What do you do?

MISS GUCKEMUS: I am a housewife.

THE COURT: Do you have anything to say in answer to any of the questions?

MISS GUCKEMUS: No, I don't sir.

THE COURT: What does your husband do?

MISS GUCKEMUS: He is a die maker at Kelsey

Hayes.

CLERK OF THE COURT: Challenges for cause?

MR. LOWE: None.

MR. CLARY: None.

(Counsel exercised challenges and the Jury box was filled.)

THE COURT: Mrs. Harjung, have you heard what I said so far?

MISS HARJUNG: Yes.

THE COURT: Do you have anything to say in answer to any of the questions?

MISS HARJUNG: I was on Jury duty about 20 years ago, County Court, about 15 years ago.

THE COURT: Criminal cases?

MISS HARJUNG: Just a small criminal case.

THE COURT: Anything in that fact that would influence you in any way?

MISS HARJUNG: I don't think so.

THE COURT: Any doubt about it?

MISS HARJUNG: No.

THE COURT: What do you do?

MISS HARJUNG: I am a part time office clerk.

THE COURT: Where?

MISS HARJUNG: Valley Electronic.

THE COURT: And your husband?

MISS HARJUNG: Vice-President of Empire Utility Construction.

THE COURT: And Mr. Golden, you heard what I said so far?

MR. GOLDIN: Yes, sir.

THE COURT: And do you have anything to say in answer to any of the questions?

MR.GOLDEN: No, I don't sir.

THE COURT: I notice you are a Security Guard. Where is that?

MR. GOLDEN: General Electric.

THE COURT: In the course of your work is it part of your job to protect your plant against robberies?

MR. GOLDEN: Yes, sir.

THE COURT: Have you ever had occasion to apprehend any robbers?

MR. GOLDEN: Yes, sir.

THE COURT: When?

MR. GOLDEN: About a year ago, sir.

THE COURT: Have you also had occasion to testify against them in subsequent criminal cases?

MR. GOLDEN: No, sir.

THE COURT: How many times have you apprehended robbers?

MR. GOLDEN: I would say three times.

THE COURT: How long have you been in this work?

MR. GOLDEN: I have been in it, I am starting my 19th year.

THE COURT: I think in view of the nature of your work the Court will excuse you.

(Juror excused and the box was filled.)

THE COURT: Mrs. Bussey, have you heard what I said?

MRS. BUSSEY: Yes, I have Your Honor.

THE COURT: Do you have anything to say in answer to any of the questions?

MR. BUSSEY: Nothing in answer to your questions, the only thing I have to say is Judge Port last month told me that I can be off three days next week, and I told him it might interfere with that time.

THE COURT: Next week?

MRS. BUSSEY: Yes.

THE COURT: What three days?

MRS. BUSSEY: Monday, Tuesday and Wednesday.

THE COURT: All right, I will excuse you. I don't think we are liable to go that long, but I can't be sure and I don't want you to be under that pressure.

MRS. BUSSEY: Thank you.

(Juror excused and the Jury box was filled.)

THE COURT: Mr. Barnum, do you have anything to say in answer to any of the questions?

MR. BARNUM: Yes, Your Honor, I know Frank Cole as a member of a Masonic Lodge, but I haven't seen him the last several years since he moved away from the city.

THE COURT: Did you know him in Utica?

MR. BARNUM: Just that he was a member of the Lodge, I didn't know anything of his work or anything about that.

THE COURT: How often did you see him as a member of the Lodge?

MR. BARNUM: Maybe once a month or something similar to that.

THE COURT: Over how long a period of time?

MR. BARNUM: Two years I will say.

THE COURT: I will excuse you.

(Juror excused and the Jury box was filled.)

THE COURT: Mr. Zollers, do you have anything to say in answer to any of the questions?

MR. ZOLLER: No, Your Honor.

THE COURT: What do you do?

MR. ZOLLER: I am a milk tester for New York Dairy Herd Improvement.

THE COURT: Do you know of any reason why you

couldn't serve here and be fair and impartial?

MR. ZOLLER: No.

THE COURT: Base your verdict on the law and on the evidence?

MR. ZOLLER: No sir.

CLERK OF THE COURT: Challenges for cause?

MR. LOWE: None.

MR. CLARY: None.

(Counsel exercised challenges and the Jury box was filled.)

THE COURT: Mr. LaTour, do you have anything to say in answer to any of the questions?

MR. LA TOUR: Yes, Your Honor, police work. I was a Justice of the Peace in Vermont for five and a half years, Special Investigator for the State Attorney's Department for a year and Special Police Officer in the racetrack.

THE COURT: Have you ever had occasion to deal with robberies?

MR. LA TOUR: No, sir.

THE COURT: In your police work or as a Justice of the Peace --

MR. LA TOUR: (Interrupting) I am sorry, in the Special Task Force for the State's Attorney Department we were involved in robbery cases, yes.

THE COURT: Do you feel that you could sit here and be fair?

MR. LA TOUR: I have another problem too. I have one son that was convicted on a petty larceny charge in County Court.

THE COURT: Do you feel that you could be fair on this case?

MR. LA TOUR: I am not positive, sir.

THE COURT: All right, I will excuse you.

(Juror excused and the Jury box was filled.)

THE COURT: Mrs. Redmond, could you tell me what you do?

MRS. REDMOND: I am a school bus driver.

THE COURT: Have you heard the questions that I have asked so far?

MRS. REDMOND: Yes.

THE COURT: Do you have anything to say in answer to the questions?

MRS. REDMOND: No, sir.

THE COURT: What does your husband do?

MRS. REDMOND: He is a dockman for M & M Transportation.

THE COURT: Do you know of any reason why you couldn't sit here and be fair and impartial?

MRS. REDMOND: No, sir.

CLERK OF THE COURT: Challenges for cause?

MR. LOWE: None.

MR. CLARY: None.

(Counsel exercised challenges and the Jury box was filled.)

THE COURT: Mr. Kiersztyn, do you have anything to say in answer to any of the questions?

MR. KIERSZTYN: No, sir.

THE COURT: Where do you work?

MR. KIERSZTYN: Griffifs Air Force Base, Computer Operator.

THE COURT: Is there anything in the fact you work for the Federal Government that would influence you here in any way?

MR. KIERSZTYN: No, sir.

THE COURT: Miss Guillaume, is it?

MISS GUILLAUME: Yes.

THE COURT: Do you have anything to say in answer to any of the questions?

MISS GUILLAUME: No.

THE COURT: Do you know of any reason why you couldn't serve here and be fair?

MISS GUILLAUME: No.

THE COURT: What do you do?

MISS GUILLAUME: I am a housewife and a

registered nurse.

THE COURT: What does your husband do?

MISS GUILLAUME: He is with the White Star Cab Company in the City.

CLERK OF THE COURT: Challenges for cause?

MR. LOWE: None.

MR. CLARY: None.

CLERK OF THE COURT: Jury satisfactory to both sides?

MR. LOWE: Yes.

MR. CLARY: Yes.

THE COURT: How many of you live in Utica? Starting with Juror No. 1, could you tell me where you live?

JURORS: Illion, New York. New York Mills. Utica, Mineville, Rockville, New Hartford. Utica, West Springfield. Secquoit. North Johnson. South Berlin. Clinton.

THE COURT: We will draw four alternates. Will counsel come to the bench?

(The following proceedings took place at the bench out of the hearing of the Jury.)

THE COURT: This is four out of six left on the panel --

CLERK OF THE COURT: Seven.

THE COURT: Three more, and I would ask you not to just pick off somebody because you don't like the shape of his nose. In light of that and at this time of the year with the kind of weather that has been forecast, the fact that some of these people come from quite a distance and I need the protection of four alternates, if we can get them I would like to. I am not asking you to waive any rights.

MR. CLARY: May I ask how many challenges we get?

THE COURT: You get two.

(Four alternate jurors were drawn.)

(The following proceedings took place in the hearing of the jury.)

THE COURT: All of you heard what I said, and do you -- do any of you have anything to say in answer to any of the questions?

ALTERNATE JUROR NO. 4: I have a brother that is a Captain on the Utica Police Force. He is Captain of the Narcotics Squad.

THE COURT: Anything in that fact that would influence you here?

ALTERNATE JUROR NO. 4: I think it might, because we sometimes discuss cases and sometimes I will read an article in the paper --

THE COURT: All right, that's enough, I will excuse you.

(Juror excused and the jury box was filled.)

THE COURT: Mr. Kelly, have you heard what I said?

MR. KELLY: Yes.

THE COURT: Do you have anything to say in answer to any of the questions?

MR. KELLY: No.

THE COURT: Would you tell me what you do?

MR. KELLY: Laborer for the State of New York.

THE COURT: And what do you do sir?

ALTERNATE JUROR NO. 3: Floor man, Waterbury.

THE COURT: Mr. Rechsteiner?

MR. RECHSTEINER: Farmer.

THE COURT: And Mr. Clark?

MR. CLARK: I am a sales representative.

CLERK OF THE COURT: Challenges for cause?

MR. LOWE: None.

MR. CLARY: None.

(Challenges exercised by counsel and the jury box was filled.)

THE COURT: Mrs. Bond, have you heard what I have said so far?

MRS. BOND: Yes, sir.

THE COURT: Do you have anything to say in answer to any question?

MRS. BOND: No.

THE COURT: What do you do Mrs. Bond?

MRS. BOND: I am a housewife.

THE COURT: What does your husband do?

MRS. BOND: He is a veterinarian.

THE COURT: Do you know of any reason why you couldn't serve here as an alternate juror and be fair?

MRS. BOND: No.

CLERK OF THE COURT: Challenges for cause?

MR. LOWE: None.

MR. CLARY: None.

CLERK OF THE COURT: Alternates satisfactory?

MR. LOWE: Yes.

MR. CLARY: Yes.

(The jury panel and alternates were sworn at 11:43 a.m.)

THE COURT: We will take a recess now until after lunch, we will resume at 2:15, Court has a few other matters on this morning and there is no point in your just sitting around.

So return at 2:15 after lunch.

Don't talk about the case, don't let anybody talk about it with you. Wait until you have heard all

the evidence, the closing arguments of the lawyers, the Court's instruction, and then you can talk about it all you want to during your deliberations, but be particularly careful in the halls and in the elevators of the Court House, if you have any embarrassing contact with any of the witnesses or any of the lawyers or with the defendant so that you keep fair and impartial and judge this case as you all assured me you can on the law and evidence and nothing else.

I would like you also not to read anything about this case or listen to anything about it on the radio or television. Keep an open mind. That is your job just as it is mine.

All right, have a nice lunch.

****

This is to certify that the foregoing transcript is a true and accurate transcript of the proceedings heard at the time and dated noted in the heading hereof.

MARTIN L. MILLER
Official Reporter
United States District Court
Northern District of New York

* * * * *

called as a witness on behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Mrs. Cauley, are you employed?

A Yes, I am.

Q And by whom are you employed?

A Marine Midland Bank Northern, Watertown, New York, Seaway Branch of Marine Midland.

Q And if you could during your testimony project your voice as though you are speaking to me.

THE COURT: You say you work at the branch at the Seaway Shopping Plaza?

THE WITNESS: Yes.

BY MR. LOWE:

Q In what town is the shopping plaza located?

A In the town of Pamelia.

Q And what position do you hold at the bank?

A I am a teller.

Q And how long have you been employed by the bank?

A Four years.

(A photograph marked Government's Exhibit 13 for identification.)

BY MR. LOWE:

Q Miss Cauley, I am handing you Government's Exhibit 13 for identification and I will ask you if you can identify what appears in that picture?

A This is the front of the bank at the Seaway Plaza, as you are facing it.

Q And is that a fair and accurate representation of the bank as it appeared on August 30, 1973?

A Yes.

MR. LOWE: Could we mark these three exhibits for identification?

(Photographs marked Government's Exhibits 14, 15 and 16 for identification.)

Q Miss Cauley, I now show you Government's Exhibit 14 for identification and ask you if you can describe for us what appears in that photograph?

A This is the teller's counter as you enter the bank, it is on the left hand side of the bank.

Q When you say "it" then you mean the teller's counter is on the left?

A Yes, on the left hand side.

Q Would the photographer who took that picture be standing in the front of the bank facing to the rear?

A Yes.

Q And is that a fair and accurate representation of that portion of the bank as it appeared on August 30?

A Yes, it is.

Q I am now handing the witness Exhibit 15, and I will ask you the same question, could you describe for us what appears in that photograph?

A This is taken from the front of the bank, the teller's counters on the left hand of the bank and the customer's counter on the right side as you are looking from the front of the bank to the rear.

Q The photographer would have been standing again in front of the bank looking towards the rear?

A Yes.

Q Is that a fair and accurate representation of the portion of the bank as it appeared on August 30, '73?

A Yes, it is.

Q And I finally show you Exhibit 16 for identification, again ask you the same question. Can you describe what is represented in that picture?

A Yes, this is a view of the front of the bank

taken from the inside looking out.

Q And could you tell us approximately where the photographer would have been standing when he took that picture?

A Well, he is standing probably half way in the lobby of the bank.

Q Half way into the lobby?

A Looking toward the front of the bank.

Q And is that to the best of your recollection a fair and accurate representation of the front of the bank as it appeared on August 30, '73?

A Yes it is.

MR. LOWE: The Government offers in evidence Exhibits 13, 14, 15 and 16.

MR. CLARY: I have no objection, Your Honor, to 13, 14 and 15. I wonder if I could ask a couple of questions about 16.

THE COURT: Surely.

VOIR DIRE EXAMINATION BY MR. CLARY:

Q Mrs. Cauley, were you present at the bank when this photograph was taken, 16?

A I don't recall it being taken, I didn't see anybody taking any photos.

Q There is an automobile parked outside of the bank in the photograph 16.

A Yes.

Q Now this photograph does not purport to represent what automobile is outside the bank during the course of this robbery?

A I wouldn't say it does.

Q Were you inside the bank when the robbery took place?

A Yes.

Q Was the vehicle that was parked, that is, purported to be shown in the photograph 16, is that parked outside of the bank to your knowledge at the time of the robbery?

A I didn't see outside the bank.

MR. CLARY: All right. Could we approach the bench, Your Honor, on this? I think we can do it with a stipulation.

(The following proceedings took place at the bench out of the hearing of the Jury.)

MR. CLARY: I would like to stipulate this vehicle was not out there and it is not --

THE COURT: Quite obviously, it is a police car.

MR. CLARY: And it is not to portray a vehicle that was allegedly parked out there. In other words, this is not --

THE COURT: Do you have a clear shot, without the vehicle?

MR. LOWE: I will stipulate to that.

THE COURT: This isn't the vehicle?

MR. LOWE: That's right, that is not the vehicle.

THE COURT: All right.

MR. CLARY: With that stipulation I haven't any objection.

THE COURT: Received.

(Exhibits 13, 14, 15 and 16 for identification marked in evidence.)

(The following proceedings took place in the hearing of the Jury)

BY MR. LOWE:

Q Miss Cauley, I direct your attention to August 30, '73. I believe you already told Mr. Clary you were working at the bank on that date?

A Yes.

Q Directing your attention to the morning of August 30, did anything of a somewhat unusual nature occur?

A Yes, there was a male that entered the bank and came over to the teller's counter and asked

the teller who was next to me -- well, as he entered the bank, I looked up and he said "This is just what it looks like," and then he leaped up over the counter and he told the teller that was standing next to me to fill the bag, and he had a gun, and then she filled her bag with money out of her drawer, and then they went to the third teller, filled the bag --

THE COURT: You say "they" was there more than one man?

THE WITNESS: The girl, the teller, he had the teller and himself that went to the third teller's counter and filled the bag with money there. Then they filled -- I am kind of confused right now.

BY MR. LOWE:

Q Well, let me ask you this, where were you when you first observed this male that you just referred to?

THE COURT: We will take a short recess.

(Thereupon a short recess was taken after which the hearing was resumed.)

BY MR. LOWE:

Q Miss Cauley, were you just describing for us certain observations of yours on the morning

of August 30, could you tell where were you standing, what you were doing when you first observed the individual you referred to?

A I was just finishing with a lady customer. She turned to walk away, and just as she was walking away, the man, the robber, was about six to seven feet from me at an angle, and he said "This is just what it looks like" and --

Q (Interrupting) Let me ask you this before you describe his appearance, were you at your position in the bank?

A Yes, first position as you walk in the bank on the left hand side.

Q You referred in the photograph to a counter in the bank, is there a counter, a teller's counter?

A The whole counter along -- the teller's counter, yes, all along one side of the wall.

Q Were you behind that counter?

A Yes, I was.

Q And are there several positions along the counter for employees?

A Yes, there is a position next to me, then there is a third position which is vacant, and that -- there is an interest machine there,

then there is a fourth position.

Q And you say you were at the first position?

A Yes.

Q And would that be the position closest to the door of the front of the bank or the one closest to the rear?

A Closest to the front of the bank.

Q And do you recall on August 30 at the time we have been referring to, who was at the second position?

A Yes, Miss Kingsbury.

Q Is that Alice Kingsbury?

A Yes.

Q And then I think you testified to the third position was vacant, was anyone occupying or working at the fourth position?

A Yes, Mrs. Olsxewski.

Q Is that Catherine Olszewski?

A Yes.

Q Now I think you were about then to describe the appearance of the individual you observed, did he have some kind of jacket on?

A He had a bright orange parka and he had a hood on it, and he had a mask, a white gauze, could have been a diaper or something over the face,

and he had a gun in his hand.

Q Now you referred to the hood on the jacket, was the hood hanging down in the back?

A No, it was covering his head.

Q And then I think you testified that this person whom you have just described jumped on top of the teller's counter?

A When I looked up he said "This is just what it looks like." Then the next thing I knew he was jumping over the counter.

Q Did he jump up over the counter at your position?

A No, he jumped at the second position where Alice Kingsbury was stationed.

Q Let me ask you this, you mentioned the fact he had a gun, you said?

A Yes.

Q Could you describe for us the gun? Was it a rifle?

A No, it wasn't a rifle, it was like a pistol, probably about this long (indicating).

Q Well, you are indicating with your fingers, is that about six inches approximately?

A I would say so, yes.

Q And was he just holding the gun down at his side?

A No, when he was up on the counter he was pointing the gun at Miss Kingsbury, and then he jumped down and he had a bag in his hand and he told Miss Kingsbury to fill the bag.

Q And did she do so?

A She did so.

Q She filled it with what?

A With money out of the drawer, and then he went down to Mrs. Olszewski's position and Alice went along with him.

Q Miss Kingsbury accompanied this individual down to Mrs. Olszewski's position?

A Yes.

Q Then what did they do at that position?

A They took the money out of Mrs. Olszewski's drawer and then at one point there was a stool behind my counter, and at this point I was just moving off the stool and he turned and pointed the gun at me and said "Don't you try anything."

Q Now during the period that the individual that you have described and Miss Kingsbury went to Mrs. Olszewski's position, were you still down at your position?

A Yes.

Q And did there come a time when the individual

you have described and Miss Kingsbury came down to your position?

A Yes, they came down to my position, then he called us all down by Mrs. Olszewski's position, and then he went through the drawers again, and then he opened the cupboard, there's like two drawers, then there's a cupboard underneath, he went through there. Then he went back to Miss Kingsbury's position and went through the same situation there.

Q Now during this period of time -- I will withdraw that question. You testified that when you first saw this individual you were waiting on a bank customer, is that correct?

A Yes, she was just turning to leave the station that I was at.

Q And what did that bank customer do, did she in fact leave?

A She did, yes, she backed out the door more or less.

Q So after she left who remained in the bank besides yourself, Mrs. Olszewski, Miss Kingsbury and this individual you are describing?

A A young lad came in the bank.

Q Was he in the bank when the individual first

came in?

A No.

Q So there was no one else in the bank besides the employees?

A No.

Q There came a time when a young lad came in the bank?

A Yes.

Q What if anything did the individual you have been describing do when the young lad entered?

A Well --

Q Did he give any orders to the young lad?

A At the same time that the young lad was there, there were two people, I imagine husband and wife, a little child, they just started in the door. It is like there is two doors there, and they started in the door and they must have noticed the robber in there, and so he said, hollered them -- hollered to them to come in and stay in there, and they came in. There was a little child with them, too.

Q Now you have referred to the three employees at the bank at this time, yourself, Miss Kingsbury and Mrs. Olszewski, those were the only employees on the premises?

A Yes.

Q There were no security guards?

A No.

Q Are there any bank surveillance cameras at the bank?

A No.

Q During normal business hours are there ever security bank guards at the bank?

A No.

Q Does the bank have any kind of an alarm system?

A Yes, we have an alarm system.

Q And how does that alarm system work?

A Well, it is to the left of each teller's counter.

Q What is it, a button of some kind?

A Yes.

Q Was there such a button to the left of your position one?

A Yes.

Q And during the events that you have been describing, did you activate that alarm system?

A I didn't dare, after he told me not to.

Q So you didn't?

A No, I didn't.

Q Now after the individual had removed the money

from the drawer, what did he then do?

A He went back to Miss Kingbury's counter and jumped back up on the counter, and then he told Miss Kingsbury, pointed the gun at her, and told her to hand him the money. Then he went back on the other side of the counter and went out the door.

Q Out the front door?

A Yes.

Q And at that point as he was leaving through the front door, where were you at this time, were you back at your position one or were you somewhere else?

A I was along down toward Mrs. Olszewski's position.

Q Toward the rear of the bank?

A Yes.

Q And what if anything did you do after this individual left the bank?

A I went around toward the rear of the bank, and there is an extension along the bank and out toward the front, to see in which direction he might have gone.

Q Did you then also -- you left the bank?

A I went outside.

Q And did you see anyone when you went outside the bank?

A There was a party, a gentleman that was next door, the laundromat, well, it was two doors down, and he had come running out of the laundromat and he told me that --

MR. CLARY: Your Honor, I would object to whatever the man told her.

THE COURT: Sustained.

BY MR. LOWE:

Q Did you observe anything when you went outside the bank?

A I saw the car going down -- there's a highway to the left as you are facing the front of the bank, say you are inside the bank and facing to the left, there is a highway, it is called Harbuck Avenue, and the car was down that road.

Q And could you tell how many individuals were in the car?

A No.

Q And had you seen this car at all outside the bank earlier?

A No.

Q But you did have a conversation with a gentleman

outside the bank?

A Yes.

Q You testified that the gun that the individual was holding, I think you indicated about six inches long, can you describe it for us in any greater detail, do you recall the color?

A Yes, it was like a dark brownish to a black color, you know, what -- like what you would call a pistol.

Q And to your knowledge was it a real gun?

MR. CLARY: Object, Your Honor, unless she is competent.--

THE COURT: If she knows.

BY MR. LOWE:

Q To your knowledge was it a real gun?

A Yes, I would very definitely say it was a real gun.

MR. LOWE: That's all I have, Your Honor.

CROSS EXAMINATION BY MR. CLARY:

Q Is it Miss or Missus?

A Miss.

Q Miss Cauley, did you have any customer at your teller's station when you first observed this individual?

A I had a customer that was just leaving.

* * * * *

Q They didn't move around the bank?

A No, not to my knowledge.

MR. CLARY: That's all I have. Thank you.

MR. LOWE: Just two questions, Your Honor.

REDIRECT EXAMINATION BY MR. LOWE:

Q Miss Cauley, You just testified that to your knowledge the customers in the bank did not move around away from the position you were just describing, but were there periods of time while the individual in the orange jacket was in the bank that you were not observing the customers?

A Oh, yes.

Q So it is possible the customers did move around?

A Very possible.

MR. LOWE: Nothing else, Your Honor.

MR. CLARY: Nothing further.

THE COURT: You are excused.

(Witness excused.)

MR. LOWE: Your Honor, could I at this time read into the record two stipulations that have been entered into?

THE COURT: Yes.

MR. LOWE: It is hereby stipulated and agreed by and between the attorneys for the

parties in this action, that on and about August 30, 1973 the deposits of the Marine Midland Bank Northern, Seaway Plaza Branch, Pamelia, New York were insured by the Federal Deposit Insurance Corporation.

The second stipulation: It is hereby stipulated and agreed by and between the attorneys for the parties in this action that the Marine Midland Bank of New York Northern, Seaway Plaza Branch, was robbed of $36,640 on August 30, 1973.

I may proceed?

THE COURT: Yes.

MR. LOWE: The Government calls Jane Schultz.

JANE E. SCHULTZ

called as a witness in behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Where do you live, Mrs. Schultz?

A I live in Theresa, New York.

Q And where is Theresa located in relation to Watertown?

A It is north.

Q And what is your husband's name?

A Donald.

Q Do you have any employment besides that of being a housewife?

A No, I don't.

Q Now directing your attention to August 30 of 1973, do you recall where you were that morning?

A Yes.

Q And where was that?

A I was at the laundromat at the -- I think it is the Seaway Plaza in Watertown.

Q And were you alone at that time -- on that occasion at the laundromat?

A No, my husband and my two children were with me.

Q Now are you familiar with a branch of the Marine Midland Bank that is located at the shopping plaza?

A Yes, I am.

Q And could you tell us where the bank is located in relation to the laundromat where you were?

A The bank was one store down from the laundromat to my right.

Q Now when you say to your right, you mean from the inside of the laundromat looking out?

A Yes.

Q So if you were standing outside the laundromat looking in, the bank is to your left, is that right?

A True.

Q This kind of question is always difficult, could you estimate the number of feet between - -

THE COURT: Could you tell us east or west or north or south the direction of the bank from the laundromat, so that all of us can orient to it?

BY MR. LOWE:

Q Can you answer that question?

A No, I am not familiar with the directions.

THE COURT: Can you lead her?

MR. LOWE: I don't know it in terms of east and west, Your Honor.

BY MR. LOWE:

Q Can you estimate the number of feet, Mrs. Schultz between the laundromet and the bank?

A Well, I would say it is about the distance from me to you, a little or little less.

Q And I answered -- I think you answered this question, but what if anything is there in between the bank and the laundromat?

A How do you mean that?

Q Is there another store between the two?

A Yes.

Q Now while you were in the laundromat on the morning of August 30, did anything unusual occur?

A Yes.

Q And what was that?

A Well, I was looking out the window while I was waiting to do the clothes, and this person in an orange, bright orange parka caught my eye, and I just watched because there was nothing else to do, and he turned around and there was a horrible looking thing wrapped around his face, and I thought it was peculiar, and I got the attention of my husband and I said, "there's something going on here, I don't know whether it's a robbery or a joke or what," and then we both just watched.

Q Now when you say you got the attention of your husband, where was your husband on -- at that time?

A He was in back of me doing something with the machine.

Q And where were you?

A I was looking out the window.

Q In the laundromat?

A Yes.

Q Where in the laundromat, close to the window?

A Right next to the window.

Q And is there a bench of some type that is in front of the window?

A Yes, there is.

Q And were you sitting on the bench?

A I was like kneeling on it and my husband was behind me.

Q Now when you first noticed this individual that you have described, where was he?

A He was on the passenger side of the car.

Q And was -- and where was the car in relation to the bank?

A It was in front of the bank.

Q Directly in front of the bank?

A Well, yes.

Q Now you were looking through the window of the laundromat?

A Yes.

Q And was there anything that obstructed your vision of this, of the car you just referred to, were there any signs or markings in the window?

A No.

THE COURT: Was the car facing away or towards you?

A THE WITNESS: Towards me.

BY MR. LOWE:

Q As I understand it the car was facing towards you, the passenger side of the car would have been away from the bank, is that correct?

A Yes.

Q Did you observe anything about the car, the make, color?

A I didn't observe the make, it was some shade of blue and it wasn't a new car, it was an older car.

Q Now did you observe the individual that you have described get into the car?

A Yes.

Q Was there anyone else in the car?

THE COURT: Wait a minute, Mr. Lowe. When I last heard he was sitting on the passenger side of the car when she first saw him, what happened from there?

THE WITNESS: He was standing.

THE COURT: On the passenger side?

THE WITNESS: Outside the car.

THE COURT: Outside the car?

THE WITNESS: Yes.

BY MR. LOWE:

Q Was the passenger, the door on the passenger side of the car open at that time do you recall?

A I don't remember that.

Q Did there come a time, however, when you observed him get into the car?

A Yes.

Q And did you observe anyone else at this time in the car?

A Yes.

Q And where was that other person sitting?

A He was sitting behind the wheel.

Q Can you describe the person that you saw sitting behind the wheel at that time?

A Yes, I can.

Q Would you do so?

A Well, I saw him from the steering wheel up, and he had a hat on, he had a flat brim, round brim like a western hat, and on the top of it was flat, sort of a greyish color, and he had dark hair. It was light and I could see lights in his hair. He had on glasses that were tinted, and

from what I remember they were rimless, and he had a smile, he kind of smiled, a very distinctive smile which you would remember.

MR. CLARY: I object to that, Your Honor.

THE COURT: Yes, that you would remember. Strike that.

BY MR. LOWE:

Q In which direction was this individual that you have described looking while you were observing him?

A He was looking at me.

Q He was looking in your direction?

A Yes.

Q Now after the other individual, the individual in the orange parka got in the car, what happened?

A The driver, he put his arm up on the back of the car and made an up and down motion with his hand, and then they drove off past me.

Q In other words the car accelerated, came down -- came towards you?

A True.

Q At this point were you able to observe both the driver and the passenger?

A No, all I could see was the driver.

Q As the car accelerated, progressed toward you, would the driver have been on the side of the car closest to you or away from you?

A The driver would have been closest to me.

Q And did the car pass directly in front of the laundromat?

A Yes, it did.

Q Were you observing the car -- the driver of the car from the time it left the front of the bank as it progressed past you?

A Yes.

Q Is the individual that you have described and who was driving that car in this Court room at this time?

A Yes, he is.

Q And could you describe for us where he is, state where he is?

A He is in front of me at the second table.

Q Is that the individual on your left or your right at that table?

A On my left.

Q Is this the individual you are identifying (indicating)?

A Yes.

MR. LOWE: Would the record reflect the

witness has identified the defendant?

THE COURT: Yes.

BY MR. LOVE:

Q Now what occured after the automobile passed you, what did you do?

A Well, I didn't do nothing, my husband went outside and the lady from the bank came running up the sidewalk, and my husband got the number of the car.

Q Did there come a time when the car went out of your vision?

A Yes.

Q Now after all this occured, did you discuss this event with any representatives of the FBI, the police?

A There was a man from the State Police that I talked to, and there were two men from the FBI.

Q And in connection with your discussions with them, were you shown any photographs?

A Yes, they asked me to go to the Police Station in Watertown and they showed me photographs there.

Q Would those be photographs of individuals, various people?

A Yes.

Q And did you go down to the police station with them?

A Not with them, no, I went there.

Q You went there?

A Later.

Q And while you were there did you look at certain photographs that they exhibited to you?

A Yes.

THE COURT: When in relation to August 30?

BY MR. LOWE:

Q When was this in relation to the event?

A It was in the afternoon.

Q That afternoon? August 30?

A Yes.

Q And do you recall who it was that showed you these photographs on that afternoon?

A Yes, it was the Chief.

Q Is that the Chief of Watertown?

A I think it was -- I think his name was Loftus.

Q And do you recall how many photographs were shown to you?

A No, there were several, they were in a book, I don't know the number.

Q And what did Chief Loftus or whoever the individual was that showed you the photographs,

what did he say to you when he showed you the photographs?

A He just wanted to know if there was anyone there that I would recognize as the driver.

Q And were you able to select any one of those photographs you were shown on that occasion as being a picture of the driver of the car?

A No.

Q Now did there come another occasion when you were shown photographs?

A Yes.

Q And when was that in relation to August 30?

A I think it was the same evening.

Q And where?

A At my home.

Q And who exhibited the photographs to you on that occasion?

A I think it was from -- I think it was the men from the FBI, I am not too certain of that now.

Q Were they law enforcement people of some kind?

A Yes, they were.

Q Was your husband with you on that occasion in home?

A No.

Q And do you recall how many photographs you were

shown on that occasion, that evening?

A I think it was three or four.

Q And what did the individual, the FBI Agent or whoever it was showed the photographs, what did he say to you when he showed you the photographs?

A He just wanted to know if there was anyone there that was the driver of the car that I saw.

Q And did you select any one of those photographs as being the picture of the driver?

A No.

Q Now was there another occasion when you were shown photographs?

A Yes.

Q Do you recall when that would have been?

A Well, I think it was about two weeks later.

Q Two weeks after August 30?

A Yes.

Q And where did this take place?

A At my home.

Q And on this occasion who was it that showed you the photographs?

A Inspector Semione and Mr. Donohue.

Q And was anyone else present?

A Yes, my daughter and my son and my husband.

Q And on this occasion do you recall how many

photographs they showed you?

A I think there four.

Q And what did they say to you when they showed you the photographs?

A They wanted to know if the driver of the car was among those.

Q And on that occasion did you select any one of the photographs as being the picture of the driver of the car?

A No.

Q Did they make any further inquiry, did they make any other statement to you on that occasion in connection with the photograph?

A Yes, they wanted to know if any of them was the same type as this person, and I picked out one that was the closest, but he wasn't the driver.

Q In other words, you were sure the picture you selected was not the picture of the driver, but it was the same type?

A It was the closest, yes.

Q Now did there come a time when the police or anyone else asked you to go somewhere to look at certain individuals?

A Yes.

Q Do yourecall when that was?

A I don't remember the date, I think it was the following week after he showed us the pictures.

Q In other words you have just been telling us about an occasion of approximately two weeks after August 30 when you were shown a -- or some photographs at your home, and it was a few days after that that you were asked to go somewhere and look at individuals?

A I think so, but I am not too sure of the time now.

Q And who contacted you and made that request of you?

A Inspector Semione.

Q What did he tell you when he contacted you?

A He just wanted to know if we would be free to come down to the jail, they were going to have a line up and asked us to come down.

Q Did you know -- did he tell you at all who would be in the line up?

A Oh, no.

Q Did he identify anyone?

A No.

Q Did there come a time when you did go down and observe the line up?

A Yes, we did.

Q Was it the same day that Inspector Semione contacted you?

A No.

Q When was it?

A It was either the following day or the day after, it was a Thursday.

Q Now where did you go to observe this line up?

A Went to the jail in Watertown.

Q Did you go to any particular room at the jail?

A Yes, it was upstairs, it was a small room and there were several people there.

Q Did you know any of the people who were in the room?

A No -- my husband, he was with me.

Q And when you arrived in the room, did anyone give you any instructions or advice as to what would take place?

A Yes.

Q Who was it that gave you the advice?

A There was a man there from the FBI and there was another man. He told us that we would go up to this window and look, and if we saw anybody that we recognized, to write down the number that he had on him on a piece of paper and fold the paper and give it to him.

Q When you say he asked you to step up and see if you would recognize anyone, you mean recognized as being the --

MR. CLARY: Object to that as leading and improper.

THE COURT: Yes, don't lead please.

BY MR. LOWE:

Q Was there any further discussion or any further instructions given to you by any of the law enforcement people in the room?

A No.

Q Did there come a time when you stood up to the window and looked in?

A Yes.

Q And how many individuals were you able to observe?

A I don't remember the exact number, I just saw the one person and I didn't really know the others.

THE COURT: Was it more than two?

THE WITNESS: Oh, yes.

THE COURT: More than three?

THE WITNESS: There were more than three, or maybe more than four, but I don't remember the exact number.

BY MR. LOWE:

Q You say you then recognized someone?

A Yes.

Q And after you made that recognition what did you do?

A I wrote the number down and gave it to the man and went back and sat down and waited.

Q Was there any discussion at that point as you handed the paper to the man?

A No.

Q And then you went back to the back room and waited for what?

A Waited for the other people to go up. When it was all through we just left.

Q Now during this time that you were waiting, was there any discussion?

A No.

Q Andyyou say you then left, you left the entire building?

A Yes.

Q Did anyone advise you as to the identity of the person whose number you had written down on a piece of paper?

A No, no one did.

MR. LOWE: That's all, Your Honor.

CROSS EXAMINATION BY MR. CLARY:

Q Mrs. Schultz, you wear glasses?

A I wear glasses for reading.

Q But you do have a pair of glasses?

A Yes, I do.

Q Did you have your glasses on at the time you were in the laundromat?

A No, I didn't.

Q Now I believe you testified you were kneeling?

A Yes.

Q Were you not sitting on the bench in the front of the laundromat, is that correct?

A No.

Q Were you kneeling?

A Kneeling.

Q And were you kneeling with both knees? Or were you kneeling with one knee, could you describe that?

A I don't remember, maybe one, maybe two, interchangable.

Q All right. Now do you recall what time of day this was?

A It was after ten, I couldn't tell you exactly when.

Q And you said that someone in an orange parka

caught your eye, is that right?

A Yes.

Q That is the first thing you remember seeing outside of the laundromat?

A I was looking in that direction anyhow, and there was a car there then, and then the man in the orange parka came around the car, that's when I started to notice really.

Q Then is it your testimony you didn't notice anything about the car until you saw this person in the orange parka?

A It was just a car, I didn't really look at it?

Q You didn't notice anything about a driver or anybody behind the steering wheel at that time?

A I noticed there was a driver.

Q Did you see him before?

A Before?

Q Before you saw this orange thing that caught your attention.

A I can't remember if I did, if it was at that time.

Q Now how far were you from the car when you first observed the person in the orange jacket?

A About from here to maybe that thing that goes across there (indicating).

Q Back here, this bench, or the rail?

A The railing.

Q About this distance?

A Approximately.

THE COURT: About 35 feet.

MR. CLARY: Would that be about 35 or so?

THE WITNESS: I wouldn't know.

THE COURT: What do you say, 40 feet?

MR. CLARY: I would say 35 to 40 feet.

THE COURT: All right.

BY MR. CLARY:

Q Now when you first observed this person in the orange jacket, was he standing up?

A Yes.

Q Do you have an opinion based upon your observation as to how tall he was?

A His head came above the top of the car, but I couldn't tell you how tall he was.

Q Well, let me ask you this, was he over six feet in your judgment?

A I don't know.

Q Now you observed this person, was he facing you when you first observed him?

A No.

MR. LOWE: Your Honor, I object to the form

of the question, "this person."

BY MR. CLARY:

Q The person with the orange jacket we are talking about for the moment.

A I thought you meant him.

Q Was he facing you at the time?

A When I first saw him, no.

Q Was his back to you?

A Yes.

Q And you said the car was facing toward you?

A Yes.

Q So he would be facing toward the rear of the car, is that a fair statement?

A Right.

Q Did -- then what did you observe him do, the person with the orange jacket?

A Well, he stayed there for a little bit, and it was like he was fiddling around with something.

Q Well, a little bit, do you have judgment in seconds?

A It was a few seconds.

Q A few is not real helpful, do you have any judgment as to how many?

A No.

Q Would it be more than ten?

A I couldn't tell you on seconds, I couldn't.

Q What did he appear to be doing in your judgment or in your observation?

A I don't have any idea what he was doing, I only saw him, he was moving back and forth like he was doing something, I don't know what.

Q And with his back to you?

A Yes.

Q Then what did you observe him do after he was moving back and forth, what did he do?

A He turned around and faced me.

Q And when you observed him with his back to you, was the car door open on the passenger side?

A I couldn't tell, I wouldn't think so, though.

Q Is it your best judgment that it was closed at that time?

A Yes.

Q When he turned around and faced you, was the car door open on the passenger side?

A No, because I think from what I remember that he was by the back of the car, and he would have had to come forward to open the door.

Q Now when is it that he was at the back of the car, Mrs. Schultz?

A What do you mean, when?

Q Is he facing you when he is at the back of the car?

A Yes, he turned around when he was at the back.

Q So correct me if I am wrong, when you first observed him he was standing at the back of the car with his back toward you?

A Yes.

Q And then he turned around some way and faced you?

A Yes.

Q And then came forward?

A Yes.

THE COURT: All right, I think this might be a convenient place for us to adjourn now until tomorrow morning at 10:30. Don't talk about the case, don't let anybody talk about it with you.

(Thereupon the proceedings were adjourned until February 5, 1974 at 10:30 a.m.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -

-UNITED STATES OF AMERICA -

-

-against-

-

-RAYMOND L. COWLES -

- -

Criminal No. 73-CR-167

The following proceedings took place at the United States District Court, Federal Building, Utica, New York, continuing on the 5th day of May, 1974, before HONORABLE LLOYD F. MacMAHON, United States District Judge, sitting by designation.

A P P E A R A N C E S:

JAMES M. SULLIVAN, JR.
United States Attorney
GEORGE LOWE
Assistant United States Attorney
Of Counsel
Attorney for U. S. of America
Federal Building
Syracuse, New York

DEFENDANT IN PERSON AND BY
LEE CLARY ESQ.
Attorney for Defendant
Watertown, New York

THE COURT: All right, proceed.

JANE E. SCHULTZ

recalled, having been previously sworn, was examined and testified as follows:

CROSS EXAMINATION CONTINUED BY MR. CLARY:

Q Mrs. Schultz, I believe we were at the point yesterday afternoon when we recessed where you were describing the position of the person who got in the passenger side when you were in the laundromat, do you recall that testimony?

A The man in the orange parka?

Q Yes.

A Well, when I saw him --

Q (Interrupting) I just asked you if you recall those questions?

A Yes.

Q Now could you tell the Court and Jury for what period of time you observed this automobile, how long did you observe it?

A I won't say a minute, but it was quite a few seconds.

Q Well --

A Half a minute.

Q About half a minute?

A Yes.

Q And you also I think testified that the driver looked toward you?

A Yes.

Q Now was that when the car was parked in the front of the bank?

A Yes.

Q So when he looked at you that would have been a distance I believe you said from about the railing to where you are seated, is that correct?

A That's approximate, yes.

Q Now the car I take it proceeded forward at some point?

A Yes.

Q Was the driver looking ahead at that point when he was proceeding forward down the road?

A Yes.

Q And as it passed in front of the laundromat did you then have a side view of the driver?

A Yes.

Q I would assume that would have been this side of his face, the left side, is that correct (indicating)?

A Left.

Q Now I believe you described the driver

yesterday as having dark hair with highlights, would you tell us what you mean by highlights?

A Well, there was a bright light on him and in the light there were glints in his hair, they were colored.

Q What color?

A Reddish and goldish.

Q So he had reddish highlights in his hair, did he?

A His hair was dark but he had highlights.

THE COURT: You say there was light, what kind of light?

THE WITNESS: It was a very bright day.

THE COURT: Bright sunlight?

THE WITNESS: Yes.

THE COURT: Just tell us what you saw. We weren't there and we have to rely on you to tell us what you saw.

BY MR. CLARY:

Q So you did see reddish highlights in his hair, is that correct?

A Yes.

Q Now you described -- well, could you tell us what else you observed about the driver?

A He had a moustache, he had a hat on.

THE COURT: What kind of a hat?

THE WITNESS: It had a round large brim like a western style hat with a flat top, it was grey in color, I remember he was a little bit tanned, his shoulders were well built from what I saw of him. He had glasses, they were tinted and they appeared to be rimless.

BY MR. CLARY:

Q Now the hat, you say it was a western style hat?

A I think you would call it that.

Q By that do you mean the brim turned up?

A No, it was flat.

Q And it was I think you said a large brim?

A Yes.

Q And I assume the brim went around the entire distance of the hat?

A I couldn't see the back, but I assume it did.

Q As the driver went by you were you looking at the driver?

A Yes.

Q Did you see the hat then?

A I must have but I don't remember.

Q Did the driver while you were observing him take the hat off at any time?

A No, not that I remember.

Q So he had it on during the entire time you were observing him?

A Yes.

Q And the brim, then, in your judgment, was a total brim or round brim?

A Yes.

Q As opposed to a baseball cap, for example, which just has a brim in the front?

A Yes.

Q So it would extend over the entire head?

A Yes.

Q Both the front of the forehead and the back of the head?

A Yes.

Q And do you have any judgment on the size of the hat other than it was a large brim?

A I'd say the brim was about that long, (indicating).

Q Extending out from the crown of the hat?

A Three or four inches long.

Q And that would be around the crown?

A Yes.

Q Now you are absolutely certain that this individual was -- who was driving this car had a hat on when you observed him, are you not?

A To the best of my recollection, yes, he had a hat on.

Q Is there any hesitancy about that?

MR. LOWE: I object to it, Your Honor, she has given her answer.

THE COURT: Overruled.

BY MR. CLARY:

Q Do you have any hesitancy at all about whether or not this individual was wearing a hat?

A He was wearing a hat.

Q All right. My question is you are positive of that fact, is that correct?

A Well, I said he was wearing a hat.

Q Now did you stay in the laundromat, Mrs. Schultz, or did you leave when the car left?

A I think I was there a wee bit after the car left, and I went out.

Q When you went out of the laundromat did you see the car?

A No.

Q So you don't know where it went after that?

A No, I don't.

Q Now I believe you stated your husband was in the laundromat with you?

A Yes.

Q Where was he when you were observing the car as he proceeded out?

A He was directly behind me.

Q And when you say directly, I assume you mean right next to you?

A Back of my shoulder and beside me.

Q Now you mentioned, I believe -- well, Mrs. Schultz, let me ask you this, when you identified Mr. Cowles in the Court room yesterday, you knew who I was, did you not?

A Yes.

Q That I was his attorney and representing him?

A Yes.

Q And you knew who Mr. Lowe was?

A Yes.

Q He is the attorney representing the Government?

A True.

Q So isn't it a fact, Mrs. Cowles, who wasn't an attorney at either counsel table was Mr. Cowles?

A Mr. Cowles wasn't an attorney that I know of.

Q My question was, isn't it a fact that the only who was not an attorney representing one side or the other at either table was Mr. Cowles?

A Yes.

Q Now I believe you stated that you were shown

photographs?

A Yes.

Q And correct me if I am wrong, the first time was at the Watertown Police Station?

A Right.

Q Now did you recognize anyone in there as being the driver of the car in those photographs?

A No, I didn't.

q Did you take your time when you were looking at those photographs?

A Yes.

Q And now the second occasion was where?

A At my home.

Q Did you look at photographs on that occasion?

A Yes.

Q Who showed you these photographs?

A The second time? It is confused now about the second time.

Q Well, let me ask it this way, do you recall whether they were FBI Agents or State Police people?

A Well,the time I am thinking of it was the State Police.

Q And on the second occasion were you able to select anyone?

A I didn't recognize anyone then.

Q And that was the day of the actual occurance, is that correct?

A No, the time you are speaking of was later.

Q All right. Well, perhaps, I am a little confused now, were there not three occasions when you viewed photographs?

A I think so, but it is confused in my mind how many times I was shown the photograph. Were you speaking of when the FBI men were there?

Q Well, I am asking you, I don't know, I am asking you if there were not three occasions where you viewed photographs?

A Well, I didn't recognize any of the photographs on any of the occasions.

Q Well, let's take the last occasion, all right?

A All right.

Q And was that at your home?

A Yes.

Q Do your -- do you recall when it was?

A It was some time after the robbery.

Q Would it be within two weeks after the robbery?

A Approximately.

Q And if I mentioned the date of September 9, 1973, would that refresh your recollection as

to when you were shown the photographs?

A No, I wouldn't remember the date.

Q Now who showed you photographs on that occasion? Now we are talking about the last occasion.

A Inspector Semione and Mr. Donohue.

Q And did they both -- they are both employed by the New York State Police, is that correct?

A I think so.

Q Now who is -- who was present at the time you were shown those photographs?

A My daughter and my son, my husband and the two policemen.

Q And we will be talking about the last occasion, so there is no misunderstanding.

A O.K.

Q Now where were you shown the photographs?

A In the living room of my home.

Q And did you remember which officer actually showed you the photographs?

A Yes, Inspector Semione.

Q And how long did you take in looking over these photographs?

A Quite a few minutes.

Q Quite a few minutes?

A Yes.

Q By that do you mean five or ten minutes?

A Yes, five.

Q And do you recall where your husband was while you were looking at the photographs?

A He was in and out, in the dining room and he was in the back away from me in the living room.

Q But there were occasions when he came into the living room while you were looking over the photographs, is that correct?

A Yes, but he wasn't near me.

Q But he was in the same room?

A Yes.

Q And give us your best judgment as to the number of photographs that you were shown on that occasion?

A I think there were four at least.

Q And could you tell us as best you recollect what Mr. Semione said to you and what you said to him.

A He wanted to know if I recognized the driver.

Q And what did you tell him?

A Well, I looked at them and I said that I couldn't, nothing clicked in my mind about any of them.

Q And was there any further conversation between Investigator Semione and yourself after you said that?

A Yes, he wanted to know if any of them were the same type as the driver.

Q And are you quite certain that Investigator Semione said that to you on that occasion?

A Yes.

Q And what was your reply?

A Well, I said that none of them really looked like him or were the same type, but there was one that had a moustache, and I picked that one out and said he had a moustache.

Q And did you give that photograph to Mr. Semione?

A Yes.

Q Or did you show him that photograph?

A Yes.

Q Was he making notes of what was going on at that time to the best of your recollection?

A I don't think so, no.

Q Now did you select any other photographs other than that one?

A No.

Q Now you are sure of that?

A Yes.

Q So it is your testimony that you selected one photograph and gave it to Mr. Semione and that's all the photographs you selected?

A Right.

Q Mrs. Schultz, I show you what has been marked for identification as exhibits, Government's Exhibits one through eight. I think they are now in order one through eight, would you look those over and I ask you if you recognize those exhibits, what they are?

A You mean if they were the same ones?

Q Just look them over first and then I will ask you a question or two about them.

Mrs. Schultz, my question is do you recognize exhibits one through eight?

A I recognize that I have looked at some of them, yes, sir.

Q Were they the photographs that were exhibited to you by Investigator Semione on the last occasion?

A I couldn't tell you how many of these were or if all of them were.

Q And let me ask you this, Mrs. Schultz, would you select for us the picture that you showed Investigator Semione as being the one that --

having a moustache, and the one picture that you selected?

A This is the one I selected, but I said it didn't look like the driver except he had a moustache (indicating).

Q You are referring to Exhibit one in evidence, is that correct, excuse me, which has been marked for identification, is that correct?

A Is this one? Yes. (Indicating)

Q It has a number on the back.

A 1.

Q And you are positive that is the one you are -- that is the one you selected?

A Yes.

Q And that is the only one of the pictures that you selected in that group, is that correct?

A Yes.

MR. CLARY: I will offer exhibits one through eight at this time, Your Honor.

MR. LOWE: The Government has no objection to these exhibits being received in evidence, although I just want to note it is Mrs. Schultz' testimony that she cannot be sure that these are the exhibits that she was shown.

MR. CLARY: I understand that.

THE COURT: All right, received.

(Documents marked one through eight for identification received in evidence.)

BY MR. CLARY:

Q Now Mrs. Schultz, let me ask you this question, do you know whether or not the day on which you viewed photographs that Investigator Semione showed you, was that before the lineup, before you told Mr. Lowe about the lineup there?

A Yes.

Q So the lineup occured sometime after that?

A Yes.

Q Do you have any judgment as to when the lineup was?

A You mean the number of days after?

Q Yes, number of days after.

A It wasn't too long after that, it might hav been the following week.

Q Now let me ask you a question referring to the exhibiting of photographs on the last occasion, was the image that you had of the driver of the car still fresh in your mind at that time?

A No.

Q It was not?

A No.

Q And it had passed from your mind then?

A Yes, at that time.

Q And that was before the lineup, is that correct?

A Yes.

Q So somewhere beween the time of the robbery and the time of the exhibiting of photographs the image that you had of this driver had passed from your mind, is that correct?

A Not completely, but enough so I didn't recognize him in the picture.

Q Now Mrs. Schultz, let me ask you this question, did you ever give any written statement of what you observed August 30, 1973 to any law enforcement agents?

A A written statement?

Q Yes, or signing a written statement?

A Not that I can recall, I don't believe that I did.

Q Did you ever give an oral statement to anyone?

A Yes.

Q And to whom did you give that statement, if you don't remember his name, whether he was an FBI or State Police Agent or some other police officer.

A There was a State Police and then two men from

the FBI.

Q And were these given on the day of the occurance itself?

A Yes.

MR. CLARY: I would like to ask the Government if they are in possession of any record of such conversations, and if they are I would like to request copies.

THE COURT: Mark it 3501.

(Document marked Exhibit 3501.)

THE COURT: Let the record reflect the Government has handed 3501 to the defendant.

BY MR. CLARY:

Q Mrs. Schultz, let me ask you a question about the day of the occurance. I think I forgot it. When you say this car, I assume that car ultimately left this parked position in front of the bank?

A Yes.

Q Now did it proceed ahead at a rapid rate of speed?

A No.

Q Would you characterize the speed of that vehicle as it left?

A Slowly.

Q Slowly?

A Yes.

Q So from the bank until it was passed you it proceeded at a slow rate of speed?

A Right.

Q Do you have any judgment as to how fast that might be?

A No.

Q But you would characterize it as slow?

A Slowly, yes.

Q Could you read to yourself the exhibit that has been marked 3501?

A O.K.

Q Now let me ask you, Mrs. Schultz, does that document reflect the conversation that you had with certain police officials?

A Well, yes, but --

Q (Interrupting) Well now, does it have a date that it was given?

A September 6.

Q Does that say something next to that date?

A "Date of transcription".

Q Now does it have a date on the lower left hand side?

A This one (indicating)?

Q Yes.

A 8/30/73.

Q Was the date of the occurance at the Marine Midland Bank?

A I guess so.

Q And does it say something to the left of the date?

A "Interviewed on."

Q So does that refresh your recollection as to the date of the interview?

A Well, this was the date of the robbery.

Q My question was does that refresh your recollection as to when the interview --

A (Interrupting) You mean do I remember giving this interview?

Q Yes.

A Yes.

Q And was that an interview that you gave to two special agents of the FBI?

A I don't remember which one.

Q Now does that refresh your recollection as to what you told certain police officials on the day of the robbery?

A After this happened I wrote down a short description and I gave it to my husband, and my husband

gave it to one of the FBI, I think.

Q Well, my question --

A (Interrupting) I don't know if that was incorporated into that or if that is what it said.

Q Well, my question is simply this, does this document 3501 refresh your recollection as to what you told certain police officials on the day of the robbery?

MR. LOWE: I object to the form of the question. I think she has indicated she does not -- indicated her recollection doesn't need refreshing.

THE COURT: I think you haven't laid sufficient foundation for the question.

MR. CLARY: Have or have not?

THE COURT: Have not.

BY MR. CLARY:

Q Do you recall talking to FBI Agents on the day of the robbery, Mrs. Schultz?

A Yes.

Q And did you tell them what happened?

A Yes.

Q And is document 3501 to the best of your recollection an accurate account of what you told those agents on that day?

MR. LOWE: I object to it, the document is not in evidence. If Mr. Clary wants to offer it, he can.

THE COURT: Denied.

MR. CLARY: You may answer the question.

(The Reporter read back the last question as above recorded.)

THE WITNESS: I don't think that is entirely accurate.

BY MR. CLARY:

Q It is not accurate?

A What I wrote on that piece of paper and gave to him would be accurate, but there's things in there that I don't remember.

Q Well, for example, Mrs. Schultz, did you tell the FBI Agents on August 30, 1973 about observing someone in an orange parka?

A Yes.

Q Do you remember what you told the FBI Agents on that day about that?

A The same things I told you.

Q Did you tell the FBI Agents that you saw an individual run from the Seaway Shopping Center Branch of the Bank?

A Well, see, I don't remember that now.

Q I believe you told us here that the first time you observed him he was at the car?

A That's how I remember it now.

Q Was he standing?

A I am not saying I didn't see him running, I am saying I remember now, my first recollection is at the back of the car, aside of the car.

Q On your recollection now was he moving or standing still when you first observed him?

A He was standing still.

Q Did you tell the FBI Agents on August 30, 1973 that the vehicles sped away, exiting the parking area by the Starbuck Road exit?

A No, I didn't say that, those aren't my words.

Q Did you tell the FBI Agents on August 30, 1973 anything about a hat that the driver was wearing?

A Yes, I did.

Q And you are certain of that fact, that you told them about the hat?

A Yes.

Q And on document 3501 is there any mention of a hat on the driver of the getaway car?

MR. LOWE: I object, the exhibit is not in evidence.

MR. CLARY: Well, I will offer Exhibit 3501

in evidence then.

MR. LOWE: I will oppose it's receipt in evidence, it is a written statement prepared by someone else, never been affirmed in any way by this witness.

THE COURT: Sustained.

BY MR. CIARY:

Q Mrs. Schultz, as you sit there do you see any reddish highlights in the hair of the defendant Raymond Cowles?

A The light isn't the same.

Q Well, my question is do you see any reddish highlights in his hair?

A Not right now, no.

Q You live in Theresa?

A Yes.

Q Do you know the defendant Raymond Cowles or did you know him prior to August 30?

A No, I never saw him until that day.

Q So you had acquaintenceship whatsoever with him prior to the date you say he was the driver of the car, is that correct?

A No.

Q Becsuse he lives in the Theresa area?

A I heard that he did, I don't know that he does.

Q Now Mrs. Schultz at the lineup, that was at the Jefferson County Sheriff's office?

A Yes.

Q And do you recall how many individuals were in that lineup?

A No, I saw Mr. Cowles and I didn't really pay any attention to how many there were or what they looked like.

Q So you really didn't look at the others in the lineup, did you?

A No, I didn't.

Q So you don't know whether they were similar in appearance to Mr. Cowles or dissimilar?

A No, I couldn't tell.

Q Was the individual you selected in the lineup wearing a moustache?

A I don't believe he was at that time.

Q That is your best recollection, is that correct?

A Yes.

Q Now Mrs. Schultz, did you assist an artist employed by a law enforcement agency in preparing a composite picture of the person you say you saw as the driver of the getaway car?

A Yes.

Q Do you recall when you did that?

A It was the afternoon of the robbery.

Q August 30, '73?

A Yes.

Q And where was this done?

A It was a room similar to this in that building where the police station is.

Q And it was the same day as the occurance, is that correct?

A Yes.

Q How long a time did you spend with this artist?

A It was at least an hour, I think.

Q At least an hour?

A Yes.

Q And did you tell him the description or did you talk to him about the individual you saw driving the getaway car?

A Yes.

Q And did you assist him in drawing certain features of that individual?

A You mean did I actually --

Q (Interrupting) No, did you converse with him as to how to picture certain features of the individual you saw?

A Yes.

Q I appreciate you didn't do the actual drawing

yourself?

A No.

Q And was the picture complete as a result of this interview? And in the time you were with him?

A Yes.

(A photograph marked Defendant's Exhibit A for identification.)

Q I show you what has been marked as Defendant's Exhibit A for identification and ask you if you can recognize that exhibit?

A Yes.

Q Is that a newspaper reproduction of the picture that you assisted the artist in completing?

A Yes.

Q On the day of the occurance?

A Yes.

Q And is that a fair and accurate reproduction of that picture?

A The drawing?

Q Yes.

A Yes.

Q I am sure you realize that is not the drawing itself?

A Yes.

Q But that is a fair and accurate reproduction of it?

A Yes.

MR. CLARY: I would like to offer Defendant's Exhibit A in evidence.

MR. LOWE: No objection.

THE COURT: Received.

(Defendant's Exhibit A for identification marked in evidence.)

BY MR. CLARY:

Q Exhibit A in evidence portrays an individual that very definitely has a hat on, is that correct?

A Yes.

Q And is that a fair and accurate portray or picture of the individual you saw driving the getaway car?

A It wasn't accurate and it didn't look exactly like him, but it was as near as he could come up with, and there were similarities that I felt that it did represent him somewhat.

Q Now on the moustache for example, is that a fair picture of the way you remembered the moustache on the day of the occurance?

A Nearly so, not exactly, he couldn't get it

exactly, he did have a full moustache.

Q And you are sure it was a full moustache such as portrayed in Exhibit A?

A He appeared to me to have a full moustache.

Q Now what about hair line, is that a fair portrayal of the hair line of the individual you saw on the day of the occurance?

A Nearly so.

Q Thank you. Mrs. Schultz, you testified that the individual driving the automobile had a hat on, is that correct?

A Yes.

Q Are you as sure of that fact as you are of the identification you made in Court of the defendant?

MR. LOWE: I object to the form of the question.

THE COURT: Sustained.

MR. CLARY: That's all I have, Your Honor.

REDIRECT EXAMINATION BY MR. LOWE:

Q Mrs. Schultz, you testified that the car that had been in front of the bank proceeded toward you and toward the laundromat, is that correct?

A Yes.

Q And you testified that it proceeded at a slow rate of speed?

A Yes.

Q Did there come a time when the car was directly in front of you where you were standing, directly in front of the laundromat?

A Yes.

Q Could you estimate the approximate distance between you and the car at that point when it passed directly in front of you? I appreciate yesterday you had some difficulty with stating distances.

A Well, like from here to about --

Q If I walked toward you, tell me "stop" at about the distance it was.

MR. CLARY: Your Honor, I object to this. She was about to give a description before I think she was interrupted.

BY MR. LOWE:

Q If you can't give a distance in number of feet, state it in terms of objects in the room if you will.

A Well, about from here to end of this first table (indicating).

Q Right about here (indicating)?

A Back a little more.

Q Right about here (indicating)?

A About, yes.

Q And that was the distance between you and the car when it passed directly in front of the laundromat?

A True.

Q You testified that you do wear glasses when you are reading, is that correct?

A Yes, I do.

Q Are you far sighted?

A I can see things very well at a distance, but I can't see the printing up close.

Q When Mr.Clary was examining you with regard to the last time that you were looking at photographs, I think that this was at your home, Investigator Semione was showing you photographs, Mr. Donohue was there, your husband was there, your children were there?

A Yes.

Q And I think you testified that while you were examining the photographs, to the best of your recollection your husband was in and out of the living room?

A Yes.

Q And to the best of your recollection during that period of time was he in the dining room as well

as the living room?

A He was in the dining room part of the time.

Q You also testified in response to Mr. Clary's questions that there came a time, there was a time when the image in your mind, the picture in your mind of the driver of the car passed from your mind, is that correct?

A Yes.

Q And did there come a time when the image in your mind of the driver or the picture in your mind of the driver returned?

A Yes.

Q You recall when that was?

A When I saw him at the lineup I recognized him instantly as the driver of the car I saw.

Q And today you have an image in your mind of the driver of the car?

A Yes.

Q As you saw him on August 30?

A Yes, I can see him.

Q You testified that when you viewed the participants in the lineup you immediately recognized Mr. Cowles.

A Yes.

Q I think you testified that you did not look

closely at the other participant? Were you aware there were other participants in the lineup?

A Oh, yes.

Q You testified in response to Mr. Clary's questions that on the evening when Inspector Semione was showing you photographs and you selected one as being of the same type of resembling the driver of the car, but you knew that individual was not the driver is that correct?

A Yes.

Q Now when you selected someone out of that lineup, were you selecting someone as being of the same type or resembling the driver or were you selecting the driver?

MR. CLARY: I object to this as leading and improper.

THE COURT: I will overrule -- I will allow it, overruled.

THE WITNESS: I recognized Mr. Cowles as the driver of the car that I saw that day.

BY MR. LOWE:

Q And yesterday when you identified Mr. Cowles in Court, were you selecting him as being someone

who is the same type as the driver, closely identifying the driver, or identifying him as being the driver?

MR. CLARY: Same objection.

THE COURT: Overruled.

THE WITNESS: I identified him as being the driver of this car.

MR. LOWE: That's all I have, Your Honor.

RECROSS EXAMINATION BY MR. CLARY:

Q Mrs. Schultz, you told Mr. Lowe that at the time you looked at the photographs this image had gone from your mind, is that correct, of the driver?

A It was in my subconscious mind, but I couldn't see like I could the day that I looked at him, no.

Q You couldn't picture him, is that right?

A I couldn't see him in the photos that they gave me.

Q Well, my question is could you remember the image of the driver at that time?

A I couldn't see him clearly, no.

Q Are you aware, Mrs. Schultz, that a photograph of Raymond Cowles was among the group of photographs that you looked at in September of 1973?

A Well, of course I know that it was now.

Q And you could not select that photograph?

A He didn't appear the same to me in the photographs, no.

Q In the photograph did he have a moustache on?

A I don't remember what he had in the photograph.

Q You didn't pick his photograph out at all, is that correct?

A That's correct.

Q For any purpose?

A For any purpose.

Q Now isn't it a fact that as this car passed by you, passed in front of the laundromat, that the driver of this car was looking straight ahead?

A Yes, I believe he was.

Q So at that point you had a side view of the driver.

A Yes.

Q The front view you had of the driver when he was 35 to 40 feet from you, is that correct?

A Well, where I said.

Q And isn't it a fact, Mrs. Schultz, you can't tell us anything about any of the other participants in the lineup, as to what color hair they

might have or how they appeared?

A There were a couple there with blond hair, and there were dark haired ones, some with long, some with short.

Q I thought you told me earlier that you didn't look at any of the other participants?

A I didn't observe them, this is just looking a second glance.

Q How long did this lineup procedure take?

A Maybe 20 minutes to half an hour.

Q Were you in the room during the entire time of the lineup?

A Yes.

Q Did you see any witness go to the lineup window on more than one occasion to view the people in the lineup?

A No, I didn't.

Q So it is your testimony that the witnesses each went up to the window on one occasion?

A No, I just say that I didn't observe anyone.

Q Mrs. Schultz, is it possible that you are incorrect in your identification of the driver?

THE COURT: Sustained.

MR. CLARY: Exception. That's all.

MR. LOWE: I don't object to that question.

THE COURT: It is to the form of the question.

THE WITNESS: Do you want me to answer it?

MR. LOWE: That question the Government does not object to.

THE COURT: Go ahead. Is it possible you are mistaken?

BY MR. CLARY:

Q My question is, is there a possibility, Mrs. Schultz, that you are mistaken when you identified Raymond Cowles as the driver of that car?

A Mr. Clary, I wouldn't be sitting here now if I was not sure that Mr. Cowles was not the man driving that car.

Q And is there a possibility that there was a lookalike, someone that looked like Mr. Cowles that was driving that car?

A No.

Q No possibility at all?

A No.

Q And Watertown, there is a city of Watertown?

A There is a city of Watertown?

Q Yes.

A Yes.

Q County of Jefferson?

A I guess it is Jefferson.

Q Do you have any idea how many people there are in Jefferson County?

A I have no idea.

Q And would 90,000 refresh your recollection?

MR. LOWE: I object.

THE COURT: Sustained. I think you are being argumentative.

MR. CLARY: That's all.

THE COURT: If you wish me to take Judicial notice of the population of Jefferson County, give me the relevant data and I will be happy to do it.

MR. CLARY: I will withdraw the question. That's all I have.

MR. LOWE: Nothing further.

(Witness excused.)

THE COURT: All right, we will take our morning recess.

(Thereupon a short recess was taken after which the hearing was resumed.)

DONALD F. SCHULTZ

called as a witness on behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Mr. Schultz, will you tell us where you live?

A I live at RD 1, OxBow Road, Theresa, New York.

Q Where is Theresa, New York located?

A Approximately 20 miles north of Watertown.

Q Are you employed?

A Yes.

Q By whom?

A Carthage Machine in Carthage, New York.

Q What do you do?

A I am a machinist.

Q And do you work any particular hours at Carthage Machine?

A Normally 3:30 to 11:30, this is only during daylight saving time.

Q That is 3:30 p.m.?

A Yes.

Q Now Mr. Schultz directing your attention to August 30, 1973 at around 10:30 in the morning, do you recall where you were at that time?

A We were at a laundromat at Seaway Shopping Plaza -- well, it is the north side of Watertown, I believe it is Pamelia.

Q You say "we"?

A My wife and I.

Q Had you ever been to that laundromat before?

A Yes, it was a very frequent occasion on Thursdays.

Q Now are you familiar with the branch of the Marine Midland Bank that is located at the Seaway Shopping Plaza?

A Yes, I am.

Q And are you familiar with where the bank is located in relation to the laundromat?

A If you were standing the parking lot facing the laundromat, it would be -- the bank would be two doors to your left.

THE COURT: Is it east, south?

THE WITNESS: I am not too familiar with the directions, but I believe the bank is west of the laundromat.

BY MR. LOWE:

Q Now could you state for us to the best of your recollection the approximate distance between the laundromat and the bank?

A 25, 30 feet, perhaps a few feet more.

Q While you were in the laundromat on the morning of August 30 did anything unusual happen?

A Well, my wife was sitting on the bench at the window at the laundromat, and I believe I was putting soap in some of the washer, and she made

a statement to me, says "What's going on out front, a robbery?" So I immediately turned around and stepped back to her and watched what was going on outside.

Q Now you -- could you tell us again where your wife was at the time she made that exclamation?

A Well, there's a bench that is parallel to the window, in fact I believe it is fastened to the wall directly under the window. She was sitting on this bench.

Q Do you know what she was doing on the bench?

A Looking into the parking lot at one point, I don't know when she started to look.

Q And where were you in relation to your wife when she made the exclamation?

A Probably three to five feet away from her.

Q Now when you first looked up after your wife made that exclamation, what did you observe?

A I observed someone getting into a car.

Q And where was the car located that you observed?

A It was parked at the curb directly in front of the Marine Midland Bank.

Q Were you looking through the window at this time?

A Yes.

Q Was there anything that you recall that obstructed your view of the bank from the laundromat at this time?

A Nothing that I recall.

Q Now in which direction was the car passing that you observed that was in front of the bank?

A Facing toward the laundromat, I believe this is east.

Q Now could you describe for us the person that you saw getting into the car?

A Well, he was wearing -- the person was wearing some sort of a disguise, like maybe a hunter would wear, florescent orange or perhaps what someone would wear while working on the highway to protect themselves from traffic. The face was also wrapped with some sort of a white bandage.

Q Was there any other covering in the area of this person's head?

A Well, there was a hat of some sort but of the same color as the rest of the disguise.

Q And what color was that disguise?

A Sort of a fluorescent orange.

Q And where was this individual in relation to the car when you first observed him?

A Well, the door on the passenger's side was open and he was just getting into the car.

Q And you stated that the car was facing in your direction toward the laundromat, so is it correct that the passenger's side of the car would have been away from the bank as opposed to being closest to the bank?

A Yes.

Q Did you make any observation with regard to the car, such as the year, make, color?

A No, I didn't.

Q Did you at any time observe the license plate number of the car?

A Yes, I did.

Q When a -- when was that if you can recall that you observed it?

A It was after the car had passed the front of the laundromat, when it was leaving. Someone came running from the bank. I ran out behind the person and observed the license number.

Q Do you recall what that license plate number was?

A Yes, it was 9872JS, New York.

Q And did you at any time subsequent to your observing the number report it to anybody?

A Yes, I did.

Q To whom was that?

A I followed the person back into the bank, who later I found out was one of the tellers, gave it to them in the bank while they were making a phone call, also gave it to the police at one point.

Q Do you wear glasses, Mr. Schultz?

A Yes, I do.

Q And what kind of glasses do you wear?

A They are bifocals, corrected for farsightedness, used only for close work or reading.

Q What are bifocals?

A Well, the lower section of the glass is ground to a particular descriptive reading for your eyes.

Q And the rest?

A The rest of it could be corrective also, but not necessarily so.

Q In any event it is your testimony that you are farsighted, you wear the bifocals for close reading?

A Yes.

Q Did you have your glasses on this day?

A No, I did not.

Q Now you testified that the individual -- the car

door was open and this individual in the fluorescent jacket was getting into the car when you first observed him?

A Yes.

Q After that what did you observe that person doing?

A He slid into the car after getting in, and while leaning toward the driver, lying down on the seat, closed the door, and just as he was going below the top of the dash or the bottom of the windshield he removed a head covering.

Q He removed his head covering at that point?

A The top part of it, yes.

Q What were you able to observe at that juncture?

A Only the eyes and the top of the head.

Q Did there come a time subsequently when he then fully disappeared from view?

A Yes, he did.

Q Now you testified there was someone else in the car?

A Yes, the driver.

Q Now could you describe the driver for us?

A Well, the driver had black hair or dark hair, I couldn't be sure which, but it was dark, he was wearing a hat, glasses, also wore a moustache,

and when pulling away from the front of the bank looked directly at myself and my wife and smiled at us.

Q Now you referred to his hair, do you have any recollection as to the length of the driver's hair?

A Probably just a little bit beyond ear length, the bottom of the ear lobe.

Q I think you said beyond hair length?

A Ear length.

Q I think you might have answered this question, when you first observed him in which direction was he facing? I now speak of the driver.

A He was facing the laundromat, looking almost directly at us at that point.

Q Now to your knowledge did this individual driver have on any kind of a disguise?

A Not to my knowledge.

THE COURT: How long did you observe him?

THE WITNESS: Well, it's really hard to judge, but it was at least five seconds, perhaps longer.

THE COURT: While he was still or would that include both?

THE WITNESS: Well, I am really not too sure

on that point, let's leave it at five seconds, it could have been longer.

THE COURT: How far away was he when you first saw him?

THE WITNESS: 25, perhaps 30 feet.

BY MR. LOWE:

Q And he traveled that distance when he passed you?

A Yes, he had to travel farther than that.

THE COURT: What was the speed of the car as best you can estimate?

THE WITNESS: Well, I cannot estimate speed, but he traveled at a speed which would be a normal speed for driving through a parking lot, which was quite slow.

THE COURT: But pulling out from a parking lot?

THE WITNESS: Yes.

THE COURT: Did you observe him all that distance?

THE WITNESS: Yes, I did, Your Honor.

THE COURT: What were the lighting conditions?

THE WITNESS: Very bright, sunny day, quite warm.

BY MR. LOWE:

Q You just testified in response to the Judge's questions that the car accelerated toward you?

A Yes, along the curb in front of the laundromat.

Q So it passed directly in front of the laundromat?

A Yes, it did.

Q And when it passed directly in front of the laundromat and directly in front of you, approximately what was the distance at that point between you and the car?

A Perhaps ten feet, eleven maybe.

Q And at this point was the driver on the side of the car closest to you or away from you?

A Directly in front of us, closest.

Q The driver was on the curb side?

A Yes.

Q Is the individual, Mr. Schultz, that you saw driving the car on that morning, in the Court room at this time?

A Yes, he is.

Q And where is he?

A He is seated directly in front of you and to your left.

Q Of the two gentlemen at this table, is he the gentleman on your left or right (indicating)?

A On my left.

THE COURT: Let the record reflect that he identified the defendant.

BY MR. LOWE:

Q Now after the car passed directly in front of you, what occured then?

A A girl came running out of the bank. I ran out the door of the laundromat and observed the license number, and the car made a right turn in the next lane of traffic.

Q Did you continue to observe the car as it progressed out of the parking lot?

A A very short distance. I followed the girl back into the bank.

Q Now after the event that you have just been describing took place, did you discuss this with any policeman or FBI Agents or law enforcement people?

A Yes, I did.

Q And at time were you shown photographs by the police or FBI of any individuals?

A At a later date, yes.

Q Do you recall when that was?

A I believe it was September 9, on Sunday afternoon.

Q And where did this take place on September 9?

A In my home in Theresa.

Q Was anyone else present at that time?

A My wife was present, Officer Donohue and Semione of BCI, I believe my daughter was also there.

Q Had you been contacted prior to this Sunday afternoon and told that someone would come up and talk to you and show you photographs?

A No, I didn't -- no, I hadn't.

Q They just arrived?

A Yes.

Q What did they say to you when they arrived as to the purpose of their visit?

A They remarked to my wife that they had some photos they wished her to look at.

Q And did you say anything to them in response to that?

A Yes, I asked them when she had finished if they minded if I looked at them.

Q Was there any other discussion that you overheard concerning the photographs as to who the people were in those photographs or anything of that nature?

A None.

Q And did there come a time that afternoon when you looked at the photographs?

A Yes, there was.

Q Do you recall whether this was before or after your wife looked at them?

A After.

Q Do you recall how many photographs you were shown?

A Well at that time I thought six, five or six, but I believe there were more now.

Q Do you recall where you were while your wife was looking at the photographs?

A I believe I was in the dining room.

Q In any event while she was observing the photographs were you standing next to her or also looking at them at the same time?

A At no time was I anywhere near her where her decision would have any influence on mine.

Q Well how did the police officers exhibit the photographs to you?

A They handed the pack of photos to me, they were all stacked.

Q Did you select any one of the photographs as being a picture of the person you had observed driving the car on August 30?

A I picked a photo, yes.

Q And did you make any statement to the police officers when you selected that photograph?

A Yes, I said that I would not be positive that this was the man, but it looked the most like the one who I had seen driving that car.

Q Then did the police officers say anything in response to that to you?

A They did not.

Q Did you select any other photograph out of that group?

A No, I didn't.

Q Did the police officers advise you as to t' identity of the person whose photograph you selected?

A No.

Q What occured after you made your selection?

A The officers took the photos and they thanked us for our cooperation and left.

Q Now on any other occasion, Mr. Schultz, were you showed photographs by any law enfocement people?

A No.

Q Did there come a time when the police asked you to go somewhere to look at certain individuals?

A Yes.

Q Do you recall when that was?

A I believe it was on the 12th, which was a

Wednesday.

Q This was the 12th of September?

A Yes.

Q Do you recall who contacted you and made that request?

A I believe it was Officer Semione, BCI.

Q And was that on the 12th?

A Yes.

Q That he contacted you?

A Yes.

Q In other words he contacted you on --

A (Interrupting) The day before they requested us at a lineup.

Q He contacted you the day before?

A Yes.

Q And then where did you go?

A Went to the Sheriff's Office In Watertown.

Q With regard to when you were initially contacted and asked to go to the lineup, was anything else said in that conversation about the lineup, what would occur, who would be present or anything of that kind?

A No.

Q Did you go to any particular room for this procedure?

A I believe it was the Deputy Sheriff's Office on the second floor.

Q Who else was present in that room?

A Several other witnesses, an attorney, and at one time or another one or more FBI men.

Q Did you know any of the other witnesses at that time?

A Other than my wife, no.

Q Were any statements made to you on that occasion when you were in the room as to what was going to take place?

A Yes, we were told that there would be a group of persons on the other side of a one way mirror and advised us as to what we should do, that we would go up and view these persons through the one way mirror.

Q Who gave you these instructions or this advice, do you recall?

A I believe it was an FBI man.

Q Were there any instructions as to whether there was a limit on the amount of time you could spend looking through the window, or whether you could take a second look or anything like that?

A No, there was not, you could take as long as you want.

Q Did there come a time when you stepped up to the window and looked through it?

A Yes.

Q And what did you observe on the other side?

A I observed six males standing on the other side.

Q And were you able to select in your mind anyone of those individuals as being the person you had observed driving the car on August 30?

A Yes, immediately.

Q And what did you do after you made that selection in your mind?

A I wrote the number that that person was holding on a card on a piece of paper and signed my name to it, folded it, and handed it to an FBI man.

Q And after you handed it to him, what did you do?

A I stepped back to the wall and let someone look.

Q Did the FBI Agent tell you who you had picked out, the name of the person?

A No.

Q What happened after you stepped back and waited for another individual to make his choice -- their observation?

A I believe I just stood there and let the others go.

Q And after all the others went ahead, what occured

then?

A We waited a few moments, someone came and took us out the door, downstairs and we waited for a few moments until they told us we were free to go.

Q Did you then leave?

A Yes.

Q And at any time during this procedure did anyone tell you the identity of the person you had selected?

A No.

Q At any time did you discuss with any of the other witnesses the individual that those other witnesses had selected?

A No.

Q Did any of these other witnesses even tell you the number they had selected?

A No.

Q You didn't know whether you had selected the same person the others had or not?

A I didn't even know if my wife had selected the same person.

MR. LOWE: No further questions.

CROSS EXAMINATION BY MR. CLARY:

Q Mr. Schultz, as you were in the laundromat with

your wife you said she said something to you and you related it to the Court and Jury what that was?

A Yes.

Q I believe that you said at that time that your back was to the parking lot?

A Yes.

Q You were doing something, would you tell us what you were doing?

A I am not certain, but I believe I was putting soap in one of the machines.

Q Then did you turn around?

A When she spoke to me, yes.

Q Where was your wife at that point?

A Sitting on the bench directly inside the window.

Q Did she remain sitting on the bench during the course of this observation that you say you made?

A Well, this is pretty hard to say, because I was observing what was going on outside, but I believe she did.

THE COURT: Mr. Clary, I am sorry. I do have a Grand Jury coming that I forgot, and we will take the Grand Jury and we will recess now until 2:15. You can resume your cross examination

then.

Don't talk about the case, don't let anybody talk about it with you.

(Thereupon the luncheon recess was taken.)

AFTERNOON SESSION

Donald F. Schultz resumed the stand.

CROSS EXAMINATION CONTINUED BY MR. CLARY:

Q Mr. Schultz, I believe we were at the point where you and your wife were in the laundromat when we broke for the noon recess?

A Yes.

Q Now how long, Mr. Schultz, did you yourself view this automobile that was outside of the Marine Midland Bank on the afternoon or on the morning of August 30, what period of time to the best of your recollection?

A Well, I didn't actually view the automobile until after it had turned down the drive area in the lot, then I stopped and looked at the number. I didn't pay too much attention to the auto.

Q You testified on direct examination that you first saw a man getting into the car, is that right?

A Yes.

Q That is the first time your attention was drawn to that automobile, is that correct?

A Yes.

Q And do you recall if the passenger's door was open at that time?

A Yes, it was.

Q And did the car stay there for any length of time after the man got in?

A Only long enough for him to get into the car and lie down on the seat and close the door.

Q Did the car then immediately leave?

A Yes.

Q Its position in front of the bank?

A Yes, I believe it did.

Q And when you went out the side of the bank -- or excuse me, outside the laundromat, you saw some lady from the bank?

A Yes.

Q Did you see her outside before you left the laundromat?

A I saw her race by the door, yes.

Q When you went out where did you see the car go?

A It was just turning right down -- what would you go it, the driving lane between the parking lines.

Q And did you see the car after it turned?

A I didn't pay any attention to the car after it turned.

Q So you don't know where it went then?

A No, I could only assume where it went.

Q But you didn't see it, in any event?

A No.

Q Did you ever give a description of the driver of the car to any police agency, any member of the FBI or State Police on the day of the occurance?

A Not that I recall.

Q Your best judgment is you did not give them any description of the driver?

A I don't recall giving one, no.

Q And what do you recall saying to any police official on that day?

A I was -- at one point I was sitting in a car with an FBI Agent, and he asked me about a description, and I said,"well, my wife could you a better one than what I can." I suggested that he wait until she came back.

Q You did talk to an FBI man, though, on the day of the occurance?

A Yes.

Q Did you talk to any other police officers that day?

A I talked to a State Police Officer.

Q Did you give him a description of the driver?

A No.

Q And did you talk to any other police officials that day?

A I believe I spoke briefly to one that had come, one of the first officers there, which I took to be the city police, only to tell them that we had viewed what happened.

Q Did you give him any description or any details of what you had seen?

A No, I don't believe I did.

Q Now did you talk to any other police officers from the day of the occurance until you were shown the photographs? I am speaking of yourself now?

A No, I don't recall that I did.

Q And so during that period of time is it your judgment you did not give any police official any description of what you had seen?

A No, I don't recall giving one.

Q Now did you ever give any written or signed statement of what you had seen on August 30 to

any police agency?

A I don't recall giving one.

Q But I believe your testimony is that you did orally talk with some police officers?

A Yes, I did.

MR. CLARY: I would ask if the Government is in possession of the substance of that conversation, if so, that I receive a copy of that.

MR. LOWE: Could that be marked as Exhibit 3502?

(Document marked Exhibit 3502.)

MR. LOWE: I ask the record show I am making available to the defendant Exhibit 3502.

BY MR. CLARY:

Q Mr. Schultz, did you testify before a Grand Jury in this matter?

A Yes, I did.

Q MR. CLARY: May I have that testimony? Is that available?

MR. LOWE: Yes.

MR. CLARY: Could I have a copy of it?

(A document marked Exhibit 3503.)

MR. LOWE: May the record show I am handing Exhibit 3503 to defense counsel.

BY MR. CLARY:

Q Now, Mr. Schultz, I believe that you stated on direct examination the driver had dark hair?

A Yes.

Q It was not blond?

A No, not -- definitely not.

Q Was it red?

A Not that I saw.

Q So did you see any red in the hair at all?

A No.

Q And would you describe the hat that this person wore that you saw?

A Well, it was -- I don't know hat styles very well, but it would be a flat brim type with a low crown probably inverted, a brim probably three inches wide.

Q And the brim went around the entire crown?

A Yes.

Q So it is a regular man's hat as opposed to a baseball cap or something that is like a golf cap, it has a brim just in the front?

A Yes.

Q Regular man's hat?

A Yes.

Q And was this hat positioned squarely on top of the head?

A Yes, I think it was.

Q And the brim, I assume then, extended out in the front?

A Yes.

Q On the side and in the back?

A Right.

Q And you noticed the hat, did you?

A I noticed the hat, but I didn't notice the color, just that he was wearing a hat.

Q But you did notice the hat when you first observed this individual you say drove the car?

A Yes.

Q Can you tell us anything else about the appearance of the individual you saw driving the car?

A We noticed that he wore glasses, he was white, had a moustache, I said the hair was fairly long.

Q Now about the moustache, what type of moustache was it, was it a light moustache?

A Well, it was dark.

Q Dark in color?

A Dark in color.

Q And was it a full as opposed to a slight moustache?

A It was a bushy moustache, quite heavy, extended

just slightly beyond the corner of the mouth.

Q Now of course you are wearing a moustache today?

A Yes.

Q Would you characterize his moustache as being the same as yours?

A Definitely not the same as mine, mine is very light in width, in other words, the width from the lip up is very narrow compared to what I saw.

Q His was much wider?

A Yes.

Q And darker in color?

A Yes.

Q And bushy, is that a fair description?

A Well, not bushy to the point where it might not have been trimmed, it had been.

Q But a full moustache as opposed to a slight moustache?

A Right.

Q Now what did you notice if anything about the glasses?

A All I noticed was that he was wearing glasses.

Q You didn't notice anything particular about the lens or the frames or anything like that?

A No, I didn't.

Q Regular glasses as they appeared to you?

A As they appeared to me they were just glasses.

Q Now let me ask you a question about the passenger, do you have any opinion as to his height, the person in the orange parka that you described for Mr. Lowe?

A I thought probably five ten or eleven, thereabouts.

Q Under six foot in your judgment?

A I would say so, yes.

Q As the car proceeded past the laundromat, was the driver of the car looking straight ahead?

A Yes, I believe he was at that point.

Q In the direction in which he was going?

A Yes.

Q And I think you told us and I think you told His Honor the speed was slow?

A Yes, very slow.

Q Very slow. Now so at that point you would have had a side view of the driver, is that correct?

A Yes.

Q Now I believe that you have told me that you could not recall whether or not or you cannot recall whether or not you gave a description to any law enforcement officers between the time

of the occurance and the time the photographs were exhibited to you, is that correct?

A That's correct.

Q Is it your judgment, Mr. Schultz, you may have given a description?

A Let's put it this way, I don't recall giving one.

Q Do you recall testifying in this matter September 25, 1973 in Watertown, New York?

A I remember testifying there, yes.

Q Do you recall being asked these questions and giving these answers, page forty: "O.K., I take it you had previously or prior to the lineup --" these are questions directed by me to you at that time --"O.K., I take it you had previously or prior to the lineup described your observations of the driver --"

MR. LOWE: Excuse me, where are we?

MR. CLARY: Page 40, top of 41.

MR. LOWE: O.K.

BY MR. CLARY:

Q "O.K., and I take it you had previously or prior to the lineup described your observations of the driver to police officials?

"A - No, I had not." Do you remember being

asked that question and give that answer?

A Yes, I believe I do.

Q "Q - You had not talked to anybody?

A - I had not talked to anyone about my observations of the driver." Remember being asked that question and giving that answer.

A Yes.

Q Does that refresh your recollection as to whether you gave a description to the police officials?

A No, it don't, not really.

Q September 25 would have been less than one month after the incident itself?

A Yes. I still don't recall that I didn't give one or that I did.

Q And would your recollection have been fresher there back in September, less than a month after the incident, than now, some five and a half months after?

MR. LOWE: I object to the form of the question.

THE COURT: Sustained.

BY MR. CLARY:

Q Now I believe you said it was Sunday September 9, 1973 when you viewed some photographs, is that correct?

A Yes.

Now you told Mr. Lowe that you viewed them after your wife did?

A That's right.

Q Now when did you ask the police officials, Mr. Semione and Mr. Donohue if you could view some photographs, before or after your wife?

A Before.

Q And did you ask them when they arrived at your house?

A I asked them before they went into the room -- the living room -- with my wife I believe.

Q Now were you ever shown any photographs before that?

A No.

Q Or were you ever asked to look at any photographs?

A No.

Q Now where were you when your wife was looking at the photographs?

A As I remember, I spent my time in the dining room.

Q Do you remember ever being in the living room during the course of her looking at the photos?

A I may have gone into the bathroom once, but I am not sure.

Q But you weren't in the living room?

A Well, I would have to go through the far side of the living room from where she was to get there.

Q Now is there a rock collection in your living room?

A Yes.

Q Were you viewing the rock collection at any time your wife was looking at the photographs?

A To be honest with you I don't really know whether she was looking at them at the time or not.

Q Do you have any judgment as to how long that it took to look over these photographs?

A No, I don't.

Q Now when you looked at the photographs did you use your glasses?

A No.

Q And I believe you said you used glasses for close work or reading, is that right.

Q Now do you recall who showed you the photographs?

A I don't recall who handed them to me, whether it was Mr. Donohue or Mr. Semione.

Q Do you recall what was said to you when you were handed the photographs?

A There was nothing said except that here they

were.

Q So you weren't asked any questions by either Mr. Semione or this Donohue, they just handed you the photographs?

A Just handed them to me, yes.

Q What did you say to them?

A I didn't say anything to them I don't believe until after I had looked at them.

Q Did you take your time looking through the photographs?

A No, not too much time, went through them quite rapidly.

Q And did you select a photograph?

A Yes, I did.

Q And did you hand that to anyone?

A I believe I handed it to Mr. Donohue?

A Do you recall what you said to him at that time?

A Something like "I don't say is -- I don't say this is the man, but he resembles him very closely," or something along that line.

Q So you could not at that point identify the photograph you selected as being the driver of the car?

A No, I wouldn't say that I did identify him as that.

Did the individual in the photograph that you selected on that day have a moustache on?

A Yes.

Q And did he have glasses on?

A No.

Q Do you recall again testifying Mr. Schultz on September 25, 1973, and this is at page 37, do you recall being asked these questions by me and giving these answers? "Q - Did this particular picture, was it a picture of a person having a moustache? A - No." Do you recall being asked that question and giving that answer?

A Yes.

Q "Q - O.K., did the individual have glasses on in the picture? A - Yes. Q - He did have glasses? A - Yes." Do you remember being asked those questions?

A Yes, I do.

Q And this was again about four weeks after the incident itself, is that correct?

A September 25? Approximately, yes.

Q Do you remember, Mr. Schultz, being asked these questions and giving these answers in this matter on November 20, 1973, page 58: "Q - And did you pick out one? A - Yes, I did. Q - Was

the individual in that photograph wearing glasses, the one you picked out? A - Yes. Q - And you are positive of that? A - Yes." Do you recall being asked those questions and giving those answers?

A I do.

Q Do you recall, Mr. Schultz, being asked these questions and giving these answers on November 21, 1973, page 214: "Q - Mr. Schultz, you said that this individual in the picture did not have a moustache? A - Yes. Q - And wore glasses?

A A - Yes. Q - Is that correct? A - Yes. Q - are you sure of that? A - As I can recall, yes." Do you recall giving those answers to those questions?

A I do.

Q Which is correct, Mr. Schultz, your testimony on those three occasions or your testimony here today?

A As regarding glasses and moustache?

Q Yes.

A The testimony I am giving today.

Q And have you since seen the photograph that was in question?

A On the date, what was it, 21st, I viewed that

photograph at considerable length while on the stand.

Q And it was at that point that you realized you were wrong on your earlier testimony, is that correct?

A Yes.

Q And you were wrong on three occasions, is that correct, about the photographs?

A If it was three occasions, yes.

Q And one of those occasions was September 25, 1973, is that correct, at the preliminary hearing?

A Yes, I think it was.

Q Now you were at this lineup, were you not, Mr. Schultz, in Watertown, New York.

A Yes.

Q And was that sometime after you selected this photograph?

A Approximately four days.

Q And you described to Mr. Lowe -- I don't want to be repetitive, six individuals in the lineup?

A Yes.

Q Is that correct?

A Yes.

Q Did any of those individuals in the lineup that you saw on the day that you were at the office

of the Sheriff have blond hair?

A Perhaps one, I am not sure.

Q And could it have been more than one?

A It could very well have been more than one.

Q And did you see any individuals in the photographs that were in their 40's or in your judgment were in their 40's?

MR. LOWE: Which photograph? Object to that question.

MR. CLARY: Do you have it? I misspoke myself, I meant in the lineup, Your Honor, I think maybe it would be best if I marked this.

(A photograph marked Defendant's Exhibit B for identification.)

BY MR. CLARY:

Q Mr. Schultz, I show you what has been marked as Defendant's Exhibit B for identification and ask you if you can identify that exhibit?

A Yes.

Q And would you tell the Court and Jury what that is?

A Yes, well, that was probably the lineup as I saw it at the Sheriff's Office in Watertown.

Q Is it probably the lineup or is that a photograph of the six individuals that you saw on

that day?

A I can't be absolutely positive of that.

Q So you are not sure?

A No. One thing I am sure of --

Q (Interrupting) Well, I move to strike that.

THE COURT: Yes, strike it out. Just answer the question, Mr. Schultz.

BY MR. CLARY:

Q Now so you are not certain that is the picture?

A No, I am not sure of that.

Q Mr. Schultz, did you -- did the individual that you selected from the lineup have a moustache on at the time of your selection?

A No, I don't believe he did.

Q So the driver of the car, though, as you testified, definitely had a full moustache on?

A Yes.

Q The individual you selected in the lineup had no moustache?

A No.

Q Were you in the lineup room during the course of the lineup procedure, the entire course of it?

A If you mean did I leave the room, no.

Q And did you -- is this a big room or would you

describe for us, the Court and Jury, how big a room you are talking about, where the witnesses were?

A I'd say 12 by 12, 14 by 14, and most of us were lined up along the wall on the far side of the room from where the one-way mirror was.

Q So it is a square room and not very large?

A Approximately square.

Q And did you see any one of the witnesses go up to the lineup window on more than one occasion? Did they go up and view the people?

A As I recall possibly one.

Q And is that your best recollection, one witness you saw view the lineup on more than one occasion?

A Yes.

Q It wasn't two?

A I don't recall two.

MR. CLARY: Thank you, Mr. Schultz. That's all I have Your Honor.

REDIRECT EXAMINATION BY MR. LOWE:

Q Just a few questions, Your Honor. Mr. Schultz, Mr. Clary read to you from a transcript of testimony given by you on September 25 before the Magistrate, do you recall that?

A Yes.

Q And I am going to, since he only read a few sentences, I am going to read those sentences and read some he did not pick up. Page 40 at the bottom line: "Q - O.K., and I take it you had previously or prior to the lineup described your observations of the driver to police officials? A - No, I had not. Q - You had not talked to anybody? A - I had not talked to anyone about my observations of the driver. Q - Not even at the time of the incident itself? No. -- A - No. Q - You didn't voluntarily tell the police you saw the driver? A - I didn't volunteer a description." Do you remember being asked those questions and giving those answers which I think Mr. Clary read to you a moment ago?

A Yes.

Q Then going on to page 42, approximately one third of the way down the page, "Q - Did you tell them our description of the driver that day? A - I did not. Q - Were you asked whether you saw the driver? A - Yes. Q - What did you tell him? A - I told him my wife would give the best description of the driver because she

sat there and viewed the driver for some time before had entered the car, before the other had even entered the car." Do you remember being asked those questions and giving that answer?

A Yes, I do.

Q Mr. Schultz, I am going to show you exhibit 6 in evidence and ask you if you can identify that object, that photograph?

A This is the picture, the photo which I picked out of the group that was given to me by Officers Donohue and Semione.

Q That is the photograph you selected?

A Yes.

Q And in that photograph is the individual wearing glasses?

A No.

Q Does he have a moustache?

A Yes.

Q Mr. Clary read to you certain testimony on prior occasions you stated this person was wearing glasses and did not have a moustache, is that correct?

A That is correct.

Q Now do you recall when you were shown that

photograph?

A I believe the afternoon of September 9.

Q And how many photographs in total were you shown that afternoon?

A As I understand it now, eight.

Q Well, what is your recollection?

A I thought about six.

Q And do you recall, I think you testifi in response to Mr. Clary's question you looked at the pictures fairly rapidly?

A Yes.

Q Can you give us any estimate of the amount of time you looked at those pictures?

A It's hard to judge, I thought perhaps two minutes, but I don't know really.

Q About two minutes total to look at all the pictures?

A Yes.

MR. CLARY: I object to that question as leading, improper.

THE COURT: Yes, I think so. Sustained.

BY MR. LOWE:

Q What was the total amount of time you spent looking at all the pictures, whether it was six or eight, whatever the number was?

A Roughly two minutes.

Q And between that date, September 9 and November 1973 -- the end of November, 1973, when you testified in another proceeding in this matter, had you at any time seen that photograph again? Exhibit 6?

A No, I had not.

Q You testified that to the best of your recollection while your wife was looking at the photos on September 9 you were in the dining room?

A Yes.

Q Perhaps you went to the bathroom, which have necessitated your going through the living room, is that correct?

A Yes.

Q And is it correct that after she looked at the photographs you then looked at them?

A That is correct.

Q And where did you look at them?

A I was standing directly in front of the bathroom door, I believe, when I looked at them.

Q Is that in the living room?

A Yes.

Q When you were looking at the photographs you were in the living room?

A Right.

Q Who else was in the living room at that time?

A My wife, two officers and perhaps my daughter.

Q Mr. Semione was in the living room at that time?

A Yes.

Q Was there any time at all that afternoon that you can recall being in the area of this rock collection in your living room?

A I don't recall being there, at least not at the time the pictures were shown. I recall talking to Mr. Donohue about them at one time.

Q So there was one time during the visit of Mr. Donohue and Mr. Semione that you were talking about the rock collection?

A Yes.

Q While you were having that discussion were you in the area of the rock collection?

A Yes.

Q Is the rock collection in the living room?

A Yes.

Q You testified that when you selected that photograph on September 9 you advised Mr. Semione and Mr. Donohue that the individual in that photograph most closely resembled the driver of the getaway car, is that correct?

A Yes.

MR. CLARY: I object again, I think that is leading.

THE COURT: I am afraid it is. Sustained.

BY MR. LOWE:

Q Could you tell us what you said to Mr. Semione when you selected that photograph?

MR. CLARY: Well, again I think I will objec-, because he has been through this I think on direct examination.

THE COURT: Well, I will allow it. I think you got into it from a little different angle on cross. Go ahead.

BY MR. LOWE:

Q You may answer. What did he say?

A Upon handing the picture to them I said -- I did not say that this is the man, but he most closely resembled him, or words to that effect.

Q Now when you were at the lineup a few days later and identified one of those participants, were you identifying as being the man?

A Yes.

Q And today in Court when you point out the defendant, you are identifying him as the man that drove the car?

A Without question.

MR. CLARY: I will object to that, Your Honor.

THE COURT: Overruled.

MR. LOWE: Nothing further, Your Honor.

RECROSS EXAMINATION BY MR. CLARY:

Q I show you, Mr. Schultz, what has been marked for identification Exhibit 3502 and ask you if you can read that briefly over to yourself.

A Yes.

Q You read that over yourself?

A Yes.

Q And is that exhibit an accurate summary of the conference or conversation that you had with two special agents?

MR. LOWE: I object to this witness, if he is using the exhibit to refresh his recollection, it is one thing --

MR. CLARY: That is what I am doing.

THE COURT: I haven't heard the question completed. Finish your question.

BY MR. CLARY:

Q Well, I will rephrase the question. Mr. Schultz, does Exhibit 3502, does that accurately describe the conversations you had with two agents of the

FBI on August 30, 1973?

A I do not recall giving that description.

Q Is there anything in the summary to the effect that you told the FBI Agents your wife would give a better description?

A No, there is not.

Q And does that summary depict an interview on August 30, 1973?

A Yes, it does.

Q That was the day of the occurance?

A Yes, sir.

Q Mr. Schultz, do you remember being asked this question and giving this answer on November 20, 1973, page 58, concerning the photograph that you selected that was a photograph, I believe, you selected on September 9 you told us about?

A Yes.

Q Line 16: "Mr. Schultz, are you as positive that the individual was wearing glasses in the photograph as you were of the identification of Mr. Cowles? A - Yes." Do you recall giving that answer to that question?

A Yes.

Q But you were wrong about the gasses, were you not, Mr. Schultz?

MR. LOWE: I object, Your Honor.

THE COURT: Sustained.

MR. CLARY: I think that's all I have. Thank you.

MR LOWE: Nothing further, Your Honor.

(Witness excused.)

(The following proceedings took place at the bench out of the hearing of the Jury.)

MR. LOWE: There is a witness who testified at the last trial in Albany who is not well, was subpoenaed by the Government and was unable to appear. Mr. Clary and I have agreed to read in her testimony if that is acceptable to the Court, and because we are running a little bit short of time, I think we could do that right now very comfortably.

THE COURT: All right, if it suits you.

MR. CLARY: Yes.

MR. LOWE: What we did at the last trial, I had another attorney sit on the witness stand.

THE COURT: I think it is better that way.

MR. LOWE: Your Honor, would you like me to briefly explain it to the Jury?

THE COURT: I will explain.

(The following proceedings took place in

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -

-UNITED STATES OF AMERICA -

- -

- -against- -

- -

-RAYMOND L. COWLES -

- -

Criminal No. 73-CR-167

The following proceedings took place at the United States District Court, Federal Building, Utica, New York, continuing on the 6th day of February, 1974, before HONORABLE LLOYD F. MacMAHON, United States District Judge, sitting by designation.

A P P E A R A N C E S:

JAMES M. SULLIVAN,JR.
United States Attorney
GEORGE LOWE
Assistant United States Attorney
Of Counsel
Attorney for U. S. of America
Federal Building
Syracuse, New York

DEFENDANT IN PERSON and by
LEE CLARY, ESQ.
Attorney for Defendant
Watertown, New York

(The following proceedings took place in Chambers out of the presence of the Jury.)

MR. LOWE: The problem is this, Your Honor. My first witness this morning was going to hopefully be an individual who will testify that after the completion of the trial in Albany and the hung Jury the defendant returned to the Oneida Jail where he talked with the next witness. The individual is James Gaither, and at that time Gaither congratulated him on his hung Jury and said to him in effect "Well, should you have been discharged or found not guilty or did you do it?" And the defendant's response was "Hell, yes, I did it, but I am not going to tell them."

I advised Mr. Clary of the testimony of this witness this morning primarily because I realize this is prejudicial, of course. I told him I didn't see any legal problems with it, but I wanted to get anything, any possible legal problems on the record before we got any testimony along those lines before the Jury.

THE COURT: What do you mean prejudicial? You mean it is incriminating?

MR. LOWE: Yes.

MR. CLARY: Well, Your Honor, of course, numbe

one, this is a complete surprise to the defendant. We had no knowledge of any witness going to so testify.

Under the State Criminal Procedure Law the defendant is entitled to -- I appreciate this is a State law -- entitled to notice of any admission or confession that is going to be introduced at trial against him before the trial commences.

I am frank to say I was informed about it fifteen or twenty minutes ago, and I did not know whether there is any such provision either in Federal Statutory Law or Case Law, but it seems to me a fairer way to approach this kind of a problem.

The defendant has an opportunity before trial to know principally who his accusor is going to be on this kind of a very damaging statement, a confession or admission, and I think it is highly prejudicial. For example, we have no time now to investigate the background of this witness. I don't know anything about him. We can't find out anything about his record, about his convictions, about what his status is at the present time. We are pretty

much bound by his answers without proper time to prepare for this kind of a witness.

I think it is extremely prejudicial to the defendant, and I would certainly object to any introduction to this kind of testimony at this time without any notice.

THE COURT: Well, it certainly would have been better for the Government to have given you notice no question about that.

There is no Federal Law that I know of, however that requires that.

Do you have enough other witnesses to continue today without this witness?

MR. LOWE: I don't know if I would take a full day, Judge.

THE COURT: How much time do you need to investigate it?

MR. CLARY: Well, of course it is going to be kind of difficult for me to do it while I am in trial.

THE COURT: We could take a day off from trial.

MR. CLARY: Well --

THE COURT: I was thinking if we could get through today, we would take a day off. I don't

see what else we could do. The Government is certainly entitled to put that evidence in.

MR. CLARY: My only problem is that while I am here in trial I certainly can't do the investigation, so that would be agreeable.

THE COURT: We would take a day off from the trial, and if you have got other witnesses we can use most of the day, we have got the Jury in, and tomorrow I will tell them just not to come and give you a day to investigate it. Do you think you could investigate it in a day?

MR. CLARY: I think I could. I would assume that I could. I don't know hat I am going to find.

MR. LOWE: I will make available -- this witness, Your Honor, is in Federal custody and has entered a plea to a charge of bank robbery,, unrelated bank robbery, of course, and I will make available this morning our file in connection with that case in which there are several statements by this witness, all pertaining to that case.

I can also advise Mr. Clary that the witness does not have any prior felony convictions or any convictions of any kind.

THE COURT: Did he make these statements -- Was he alone with the defendant here?

MR. LOWE: He was, they were -- I think he would testify they were private conversations where other individuals were around. They were in a cell block, there were perhaps 15 prisoners in a cell block, so other prisoners would be in the general area, but I think the witness would testify that no one else to the best of his knowledge would have overheard the statement.

MR.CLARY: I certainly would like the opportunity to interview this witness.

THE COURT: I think you are surely entitled to that.

Why don't we leave it this way, you give Mr. Clary the Government's file on this witness. All right?

MR. LOWE: Yes, sir.

THE COURT: You look it over, we will make the witness available to you sometime today for you to interview him as soon as you have had an opportunity to look that file over, and then you tell me what you want, whether you want a day to investigate it or whether you are content to rest on the file.

MR. CLARY: All right.

THE COURT: Is that fair enough?

MR. CLARY: Fair enough.

THE COURT: Now let's see, what would be the best way to work that. Could we take a long lunch hour, would that do it?

MR. CLARY: The lunch hour we have been taking would be ample. I don't know how big the file is.

THE COURT: It will give you a chance to talk it over with your client. We will recess today at, say, 12:30, and we will resume at, say, 2:30 or thereabouts. That will give you a chance to read the file, to talk with your client and to talk with this witness.

Will you make this witness available for Mr. Clary?

MR. LOWE: Certainly. He is in the building right now.

THE COURT: And then he can let me know at 2:30 what if anything you want to do further in the way of investigation.

MR. CLARY: There may be one additional problem that I was just informed about. A witness who testified at a prior trial for the

* * * * *

Court out of the presence of the Jury.)

THE CLERK: Your Honor, at ten minutes to nine this morning Mr. King, the alternate Juror called and said that he woke up this morning with a bad cold and chills and said he couldn't make it in this morning for Jury duty.

THE COURT: All right, we will proceed without him. We will excuse Mr. King.

(The Jury was returned to the Court room.)

THE COURT: I am sorry we had to start late this morning. The Court had another matter that came on that had to be attended to during the past hour.

MR. LOWE: The Government calls Jeffrey P. Potter.

JEFFREY P. POTTER

called as a witness in behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q How old are you Jeff?

A 14.

Q What is your date of birth?

A September 7, 1959.

Q And where are you living at the present time?

A Perch Road, R. D. 4, Watertown.

Q Have you been living there all your life?

A No.

Q How long have you been living there?

A Six years.

Q And who lives with you there?

A My mother and father and brother and sister.

Q Are you going to school at this time?

A Yes.

Q And what school are you attending?

A General Brown.

Q What grade are you in at that school?

A Ninth.

Q Doing all right with your school work?

A Yes.

Q Jeff, are you familiar with the Seaway Shopping Plaza outside Watertown?

A Yes.

Q Are you familiar with the Marine Midland Bank that is located at that shopping Plaza?

A Yes.

Q Have you ever been to that Marine Midland Bank?

A Yes.

Q Have you been there on more than one occasion?

A Yes.

Q In general, for what reasons do you go to the bank?

A I pay the Christmas Club and also cash 4H prize money.

Q You do that at this branch of the Marine Midland Bank?

A Yes.

Q Have you been to that bank within the last half year or so and something a little bit unusual occured?

A Yes.

Q And what was it that was unusual that occured?

A The bank was robbed.

Q Do you have a recollection as to when that was, what month it would have been?

A Yes, August 30.

Q Do you recall why you were at the bank that day?

A I was paying the Christmas Club.

Q And were you alone on that day?

A Yes, I had gone to the bank alone.

Q How had you gotten to the bank?

A My mother had taken me.

Q And you say you were at the bank alone, where was your mother while you were at the bank?

A She was in the Acme doing the shopping.

Q Had you been at the Acme with her earlier?

A Yes.

Q Then you proceeded to the bank alone?

A Yes.

Q What happened when you first went inside the bank on that day?

A I got between the two sets of doors and I saw something orange going over the counter, and I proceeded to go in and I found that it was a man behind the counter.

Q Now could you describe for us in any more detail this man that you observed behind the counter?

A He had on an orange hooded parka so most of his face was covered, then around his mouth he had either gauze or cloth.

Q You say it was a hooded parka, was the hood up around his head?

A Yes.

Q Did he say anything to you as you came in?

A Yes, he told me just to keep coming in.

Q Did you notice whether or not he had anything in his hand?

A Yes, he had a gun.

Q Could you describe the gun?

A He -- It looked like the western type, it had

wooden handles, and it was a long black barreled gun.

Q Now at this point, Jeff, when you first went in and first observed him, observed this man you described, no one else was in the bank?

A There was one lady leaving and the three tellers.

Q There was one lady leaving, where was she when you first saw her?

A She was in between the two doors on the way out.

Q Now after you went through the doors and after the individual you have described said to you just keep coming in, or whatever his words were, what happened then?

A I went to the center of the floor and stood there.

Q And when you say the center of the floor, could you describe where you were in relation to the front door of the bank?

A I was -- I kept going in straight from the door, so I was about 15 feet away from the door and maybe ten feet from the tellers.

Q Would that put you approximately in front of the bank doors or to the side?

A Almost in front of them.

Q Now as you were standing there at that position you have just described, what was the individual

in the orange parka doing?

A He was behind the counter taking the money out of the drawers.

Q And was anyone assisting him while he was doing that?

A No, he was alone.

Q But did he request any of the bank personnel to assist him or any of the bank tellers assist him?

A No.

Q Did he give any orders that you overheard to any bank employees?

A Yes, he told them to go down there and up there, wherever he wanted them.

Q He ordered them to go in a particular position or place?

A Yes.

Q And were you able to observe the gun he had in his hand while he was doing this?

A No.

Q Now as this was going on did anyone else come into the bank?

A Yes.

Q And who was that?

A It was a family of a mother and father, a small boy.

Q And what if anything did the individual in the orange parka do when these people came into the bank?

A He also told them to keep coming in.

Q And did they do so?

A Yes.

Q And then where were they standing, where did they go to in relation to where you were standing in the bank?

A They just stepped into the door so they were close to the door.

Q Were they closer to the teller's counter than you were?

A No.

Q Jeff, I notice you are wearing glasses today, were you wearing glasses on that day?

A Yes.

Q Have you had your eyes checked in the last year or so?

A Yes.

Q All right. What happened after that, what happened after you and the man, woman and child were in the bank and the individual in the orange parka was giving his orders to the various tellers, what occured next?

A

A He kept taking the money out of the drawers, then when he was through he climbed over the counter and one of the tellers handed him the bag that he had been collecting the money in, and then he ran out.

Q Do you remember whether or not he said anything as he was leaving?

A Yes, he said "Thanks a lot."

Q Now were you able to observe -- did he go out the front door of the bank?

A Yes.

Q And were you able to observe him as he went out those doors?

A Yes.

Q Were you able to observe him once he reached the outside of the bank?

A Yes.

Q What did he do once he got outside the bank?

A There was a car waiting in front of the bank, and he ran around behind it and got in the passenger side and then it left.

Q Now you refer to a car that was outside the bank, could you tell us where outside the bank the car was located?

A It was directly off the sidewalk in the front

of the bank.

Q Now you have referred to the sidewalk in the front of the bank, what is on the other side of that sidewalk, is there a roadway of some sort directly next to the sidewalk?

A No, it just goes into the parking lot.

Q But cars can travel in front of the bank next to the sidewalk?

A Yes.

Q And where was the car in relation to the sidewalk, was it next to the curb?

A Yes.

Q Do you remember what kind of a car it was?

A I think it was a Chevy, it was a greenish blue, maybe 1965 or '66.

Q And I think you testified that the individual in the orange parka went around behind the car?

A Yes, to get in on the passenger's side.

Q So the passenger side was the side away from you?

A Yes.

Q Do you know where a luandromat is located at that shopping plaza?

A Yes.

Q Where is that in relation to the bank?

A It is next to it.

Q On the right or left as you are looking outside the front door?

A It is on the left.

THE COURT: Jeff, was that car a sedan or what kind of a car was it?

a THE WITNESS: I think it was a four door.

THE COURT: Four door sedan?

THE WITNESS: Yes.

BY MR. LOWE:

Q Jeff, in which direction was the car facing, toward the laundromat?

A Yes.

Q Did you observe anyone else in the car?

A Yes, there was a driver.

Q Could you describe him?

A Yes, he had dark hair, probably brown, about between the ear and neck in length, and it was curly, and he had a mustache, quite bushy, to the corners of his mouth, and he was wearing glasses.

Q He was wearing --

A (Interrupting) Wire glasses.

Q Could you give us an estimate as to the distance where you were standing and where this car was

parked?

A Maybe 50 feet away.

Q Is the individual, Jeff, you have just described who was driving that car in the Court room at this time?

A Yes, he is sitting to Mr. Clary's right at the defendant's table.

Q You are identifying this individual (indicating)?

A Yes.

MR. LOWE: Could the record reflect the witness has identified the defendant, Your Honor?

THE COURT: Yes.

BY MR. LOWE:

Q As you were observing the driver, Jeff, what part of his body could you observe? You have described his face, his head, could you see any other part of the body, could you see his shoulders, chest?

A I don't remember.

Q Do you remember what kind of -- anything about the clothing he was wearing?

A No.

Q Did you observe whether or not he was wearing an orange jacket, a parka? I am now talking

about the driver.

A No.

Q You did not observe that?

A No.

Q Did you observe the other individual? Now I am talking about the man in the orange parka who was inside the bank, did you observe him get into the car?

A Yes.

Q And what happened after he got into the car?

A The car left.

Q And did it proceed in the direction in which it was facing, that is, towards the laundromat?

A Yes.

Q And did there come a time when it passed from your vision, when you were no longer able to see it?

A Yes.

Q What did you do at that point after the car passed from your vision?

A Remained in the bank.

Q You did not go outside?

A No.

Q Now did there come a time, Jeff, when any representatives of the Police or FBI asked you

to go somewhere to look at some people?

A Yes.

Q Do you remember when that would have been in relation to August 30, about how long after that?

A About a week after.

Q And do you recall who it was that contacted you?

A Mr. Semione contacted my mother.

Q Did Mr. Semione talk to you directly?

A No.

Q Your mother told you?

A Yes.

Q What did your mother say?

A She said that on the following morning at 9:00 I had to be at a lineup at the Sheriff's Office.

Q Did your mother tell you anything about the lineup, what would happen there?

A No.

Q And did you the next morning go to the Sheriff's Office?

A Yes.

Q And did you go to any particular part of the Sheriff's Office?

A Yes, it was an office upstairs.

Q Who else was in that upstairs office, Jeff?

A Other witnesses.

Q Did you know any of those people before you went into that office? When I say the other people, those other witnesses?

A No.

Q Was anyone else in that office besides the other witnesses?

A Yes, my mother and brother and I think there was an FBI Agent.

Q Now after you went to the office did anyone tell you what was going to take place?

A Yes.

Q Who was that that told you?

A FBI Agent.

Q And could you tell us what he said?

A He said that there was a one way glass in the wall and they would open the window and we could look through the glass and there would be men on the other side, and we were to select the one that we thought we saw driving the car that day, right -- write down his number, sign our name on the paper, give it to the agent.

Q Did the FBI Agent tell you who would be behind the one way-mirror? What their names would be?

A No.

Q Did he tell you anything about who would be behind the mirror?

A No.

Q O.K. Now, did there come a time then when you stepped up to the mirror and looked through?

A Yes.

Q And at that time did you select one of the individuals as being the person you had seen on August 30?

A No, not the first time.

Q What did you do after you stepped forward?

A I stepped back and asked for another look.

Q Who did you ask that?

A The FBI Agent.

Q And then did there come a time when you stepped forward again?

A Yes.

Q And after you stepped forward that time what did you do?

A I made the selection.

Q And after you made the selection in your mind what did you do?

A Wrote his number on a paper and put my name and gave it to the Agent.

Q And then what did you do after that?

A Left.

Q Did you actually leave the room at that time or did you stay in the room?

A We left the room.

Q And where did you go after you left the room?

A Downstairs in the Sheriff's Office, then I went back to school.

Q Now when you handed the piece of paper to the Agent, did he tell you the name of the person who had been selected by you?

A No.

Q At any time did anyone tell you who it was you had selected?

A No, no one ever said.

Q Did you ever talk to any of the other witnesses about the person that they selected?

A No.

Q Did you even know what number those witnesses had selected?

A No.

MR. LOWE: That's all I have, Your Honor.

BY MR. CLARY:

Q Jeff, what time did you arrive at the Marine Midland Bank?

A Approximately twenty to eleven.

Q Quarter to eleven?

A Twenty to.

Q Do you know how you determined what time it was?

A No.

Q Do you recall looking at your watch at any time on the morning of August 30?

A Yes.

Q And where was that?

A In the Acme.

Q And do you recall what time it said?

A About twenty-five of eleven.

Q And that was before, obviously before you went to the bank?

A Yes.

Q And how far is the Acme from the bank?

A I am not sure.

Q Well, do you have judgment, is it farther than from here to the edge of the Court room, end of the Court Room?

A Yes.

Q Does it take a few seconds or minutes to walk that distance?

A Probably a minute or less.

Q And it is in the Seaway Shopping Plaza?

A Yes.

Q Now when you entered the bank you said that you were between a set of double doors when you first observed something in orange going over a counter, is that your testimony?

A Yes.

Q What is the distance between that set of double doors?

A I am not sure, maybe ten feet.

Q And then I believe you said you walked into the bank?

A Yes.

Q And is it your testimony that the individual in the orange parka took the money out of the drawers by himself?

A Yes.

Q Went up and down the various teller's cages?

A Yes.

Q And you are sure he was by himself during those occasions?

A Yes.

Q Now would you give us your judgment -- strike that. Did you observe the individual in orange while he was inthe bank?

A Yes.

Q If -- would you give us your best judgment if you would on the height of that individual?

A Maybe five foot ten.

Q And would you say he was under six feet?

A Yes.

Q Now would you describe -- I know you said an orange hooded jacket and some gauze, would you describe the gauze, was this around his whole face or just part of his face or what?

A Just part of the his face, the lower part so with the hood and the gauze just his eyes stuck out.

Q And he had no gauze up in the area of his forehead?

A No, I couldn't see any.

Q And the gauze, did it ever go over his mouth?

A Yes, I think so.

Q Over his nose or did you notice?

A Yes.

Q So about this area (indicating)?

A Yes.

Q How long were you in the bank while the individual in the orange jacket was there?

A I am not sure, it wasn't very long.

Q Five minutes?

A No.

Q Less than five minutes?

A Yes.

Q Now I believe you said that as you were going in the bank some lady was leaving?

A Yes.

Q Now was the man in the orange inside the bank when this lady was leaving or as she was leaving?

A Yes.

Q Could you describe her for us, do you have any judgment as to her age or anything descriptive about her?

A She had dark hair, maybe she was 30, that's all I remember.

Q And in any event she did not stay?

A No.

Q She left the premises?

A Yes.

Q Now you mentioned I believe a man and a woman and a child came in after you were in there, is that correct?

A Yes.

Q Now would you give us your judgment as to the age of the child?

A Maybe three or four.

Q A little tot?

A Yes.

Q Now the man and woman came in after you did, is that correct?

A Yes.

Q And how far in from the double doors, the inside double door had you walked?

A 15 feet.

Q Could it have been 20?

A Yes.

Q And when the man and lady and little child came in, how far did they come in from the double doors?

A Not very far, probably less than ten feet.

Q And had they walked straight in from the double doors?

A Yes.

Q And did they stop in the center of the bank?

A No, not in the center, they were closer to the doors.

Q But were they in line with you?

A No, they were slightly behind.

Q But towards the front of the bank, is that correct?

A Yes.

Q Now would you have any judgment, Jeff, and I appreciate this is maybe somewhat difficult, would you have any judgment as to the distance between you and the man and the woma and the little child?

A Maybe ten feet.

Q Did you and did the man and woman and little child stay in the same positions while this individual was in the bank with the orange parka on?

A Yes.

Q So none of you walked around?

A No.

Q Now I believe that you said that the man with the orange parka ran out the front of the bank, the two sets of double doors, is that correct?

A Yes.

Q And you told Mr. Lowe he went around the rear of the car, is that right?

A Yes.

Q So would he have made a right turn outside the bank?

A Yes.

Q To run around the rear of the car?

A Yes.

Q Did he stop at any time at the rear of the car?

A No.

Q He kept going?

A Yes.

Q Was he running?

A Yes.

Q And when he got to the passenger's door were you still observing him?

A Yes.

Q Do you know, Jeff, did this individual at any time turn his back to the front of the car?

A I am not sure.

Q Did he immediately get in the car?

A Yes.

Q And did he stop at any time from the time he left the bank until he got in the car?

A No.

Q And you are quite certain of that?

A Yes.

Q Now did the car then immediately leave?

A Yes.

Q And how long, Jeff, would you say you viewed the car?

A Not very long, maybe fifteen seconds.

Q Could it have been less than that?

A Yes.

Q Now some of the time you were viewing the car you were watching this man with the orange jacket, were you not?

A Yes.

Q Did you notice the driver of the car at any time before the man with the orange jacket got in the car?

A Yes.

Q And did you take your eyes off the driver to watch the man in orange?

A No.

Q But did you keep them both in your vision then?

A Yes.

Q Now I believe you described the driver as having dark hair, is that correct?

A Yes.

Q Brown I believe you said, is that right?

A Yes.

Q Were there any reddish highlights?

A No.

Q Now you also I believe told Mr. Lowe he had a quite bushy mustache?

A Yes.

Q By that do you mean a full mustache?

A Yes.

Q And do you have judgment as to how -- the farthest his mustache extended on either side of the mouth?

A About to the corners.

Q And it was a bushy mustache as opposed to a slight mustache, would that be a fair statement?

A Yes.

Q It definitely wasn't a slight mustache?

A No.

Q Or a light mustache?

A No.

Q And I believe you said he wore glasses, wire glasses?

A Yes.

Q Did you notice anything about the lenses?

A No.

Q Were they plain lenses as far as you could see?

A Yes.

Q They weren't sunglasses or tinted lenses?

A I don't think I could really tell.

Q Now did you notice anything about the driver's clothing at all?

A No, not that I remember.

Q So you don't remember whether he had an orange

jacket on or not, do you?

A No.

Q How far or what portion of the driver did you see? Perhaps you could indicate by your hand.

A About to here (indicating).

Q Down to slightly below the shoulder?

A Yes.

Q And could you see his head?

A Yes.

Q Higher head?

A Yes.

Q And did you notice anything else about the individual other than what you have told us?

A No.

Q Have you omitted anything in your description of what you observed of the individual?

A No.

Q Did you see a hat on the individual?

A Not that I remember.

Q Your best recollection is he did not wear a hat?

A Yes.

Q Now I believe you say that you were about 50 feet away from the driver when you making these observations, is that a fair statement?

A Yes, but I could have been closer.

Q All right. Could you tell us, Jeff, from where you are sitting to the rear of the Court room, about how far you were from the driver when you were observing him?

A Maybe to the first row of seats.

Q Well, back to this position here, this row of seats? (indicating)

A Yes.

Q Now was the driver of the vehicle looking straight ahead when you were observing him?

A Yes.

Q And is that the view that you had of the driver?

A Yes.

Q So he would be facing in the direction which the car was facing?

A Yes.

Q And then would you have had a side view such as this of the driver, of the left side of his face? (indicating)

A Yes.

Q And that is what you observed of the driver, is that correct?

A Yes.

Q Now Jeff, did you discuss the description that

you told Mr. Lowe and myself about and this Jury and Court with any police officers?

A Not of the driver, no.

Q You never gave a description of the driver to any police officers?

A No, they never asked for one.

Q Did you describe to any police officers what you had observed that day?

A Yes.

Q And was that to an FBI Agent or a State Police Officer or do you remember?

A Both I think.

MR. CLARY: Is there a summary of --

MR. LOWE: Yes, there is.

(Document marked Exhibit 3504.)

MR. LOWE: Could the record reflect that I am handing Exhibit 3504 to Mr. Clary?

BY MR. CLARY:

Q Jeffrey, it is your testimony, then, that you gave no description of the driver of the car to the FBI?

A Not that I remember.

Q Did you give the description of the person in the bank to the FBI?

A Yes.

Q The one in the orange parka?

A Yes.

Q And when you entered the bank and the robber told you to keep coming in, I believe you testified?

A Yes.

Q Did he direct you to the back of the bank?

A No.

Q Did you tell the FBI Agents when you were interviewed that the robber had told you to go to the back of the bank?

A No.

Q I show you what has been marked as Exhibit 3504 for identification and ask you if you would read that over to yourself?

A Yes.

Q You have read that over, have you?

A Yes.

Q Now does that refresh your recollection as to what the robber told you when you were inside the bank?

A Yes.

Q And did he direct you to the rear to -- to the rear or the back of the bank?

A I don't remember him saying to go down there, but

he did tell me to keep coming in.

Q And did he wave you toward the back of the bank?

A Yes.

Q And did you tell the FBI Agents that as you went to the back of the bank the individual began collecting the money?

A Yes.

Q By the back of the bank you mean the other end of the bank from the double set of doors, is that correct?

A Yes.

Q From the time of the incident itself to the lineup, give you -- did you give any description of the driver to any police officials?

A Not after that day.

Q And so is it your testimony that at no time between the time of the incident and the time of the lineup did you give a description of the driver to any police officials?

A No.

Q Are you -- you said in answer to Mr. Lowe's question, I believe, that the lineup or the time you were notified about the lineup was about a week after the robbery?

A Yes.

Q Could it have been two weeks?

A No, I don't think it was that long.

Q Does the date September 13, 1973 refresh your recollection as to the date of the lineup?

A Yes.

Q And that would be about 14 days after the incident, is that correct?

A Yes.

Q Now between the time of the incident and the time of the lineup were you ever shown any photographs by any police officials?

A No.

Q Now one more question if I may about the bank, did you notice anything about the double doors, did they have any markings on them?

A Yes, they have the bank's insignia.

Q And does the bank insignia mark, is that on both sides of the double doors or both doors?

A Yes.

Q So it would be on both the inside and outside doors, is that correct?

A Yes.

Q What is the bank's insignia?

A It's like a ship done in white lines and has the lettering "Marine Midland Bank."

Q And are these glass doors?

A Yes.

Q Are they paneled off in some fashion?

A No.

Q In other words, are there sections of the doors?

A Just where the handle is there is a top and bottom.

Q How many insignia are on each door, to the best of your recollection?

A Two on each door.

Q And you were making your observations there of the car, the man in the orange jacket and the driver through these sets of double doors, is that correct?

A Yes.

Q Now at the time of the lineup do you recall -- strike that. Isn't it a fact, Jeffrey, that at the time of the lineup you were instructed to -- as were all the other witnesses -- to write down the number of the man you thought you saw driving the car, was that your testimony?

A Yes.

Q And that is what you were told by the FBI Agent?

A Yes.

Q Now you did not make your selection the first

time, I believe you said?

A Yes.

Q And did you view all the individuals in the lineup?

A Yes.

Q Were you unsure?

A Yes.

Q Now in your opinion, Jeffrey, did any of the individuals in the lineup other than the one you selected on the second occasion resemble the driver of the getaway car?

A Not in their face, but they were all about the same height.

Q And did some of these individuals in the lineup have blond hair, for example?

A Yes.

Q So is it your testimony that the only resemblance to the driver that the other people had were that they were about the same height?

A Yes.

Q Just one or two additional questions, Jeffrey. Did you observe any sideburns on the driver?

A Yes.

Q You had a side view of him, you have testified to?

A Yes.

Q Do you recall the length of the sideburns and where they went, did they extend down on the cheek?

A No.

Q Where did they end?

A About at the ear.

Q Right at the ear?

A Yes.

MR. CLARY: That's all, Your Honor.

MR. LOWE: Two or three questions, Your Honor.

REDIRECT EXAMINATION BY MR. LOWE:

Q Jeff, you have stated that the individual in the orange parka inside the bank instructed you to keep coming in and you went toward the rear of the bank?

A More towards the middle.

Q Did you ever go all the way to the rear of the bank?

A No.

Q And I think you have already testified to this but to make sure it is clear approximately how many feet inside the bank door toward the middle do you think you were?

A Fifteen feet.

Q And you also testified in response to Mr. Clary's questions that when you stepped forward at the lineup proceeding to the mirror for the first time and looked in you did not make a selection, is that correct?

A Yes.

Q And you stated you were unsure of -- you were unsure at that time?

A Yes.

Q And you then stepped forward a second time?

A Yes.

Q And you made a selection a second time?

A Yes.

Q Were you unsure at that point?

A No.

Q Are you unsure this morning in this Court room after having identified the defendant?

MR. CLARY: I believe that is leading, improper question, I object.

THE COURT: Overruled, I think it is proper in light of the cross examination.

BY MR. LOWE:

Q You may answer the question, are you unsure this morning as you identified the defendant?

A No.

Q You have described, Jeff, the insignia that are on the bank doors, do you have any estimate as to the size of those insignia, the diameter, is it a circular insignia?

A Yes.

Q Do you have any estimate as to the size?

A Maybe five inches or less.

Q In diameter?

A Yes.

MR. LOWE: That's all I have, Your Honor.

RECROSS EXAMINATION BY MR. CLARY:

Q I have just one question, Jeffrey, did the individual you selected at the lineup on September 13, 1973, was he wearing a mustache?

A I don't remember.

Q You don't remember?

A No.

Q I show you, Jeffrey, what has been marked as Defendant's Exhibit B for identification and ask you if you can recognize that exhibit?

A Yes.

Q And is that a fair and accurate portrayal of the people that were in the lineup on September 13, 1973?

A Yes.

Q And does that help to refresh your recollection as to whether or not the individual you selected was wearing a mustache?

A Yes.

Q Was the individual you selected wearing a mustache?

A No.

MR. CLARY: That's all I have.

I would like to offer Defendant's Exhibit B in evidence, I don't believe it has been received.

MR. LOWE: The Government does not object.

THE COURT: Received.

(Document marked Defendant's Exhibit B for identification marked in evidence.)

MR. LOWE: I have no further questions.

(Witness excused.)

MR. LOWE: The Government calls Thomas Engle.

THOMAS H. ENGLE

called as a witness on behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Mr. Engle, are you employed?

A Yes, I am.

Q By whom are you employed?

A By the New York Air Brake Company.

Q And where is the New York Air Brake Company located?

A It is in Watertown on Starbuck Avenue.

Q And what is your position with the Air Brake Company?

A I am Supervisor of Advanced Engineering there.

Q And now Mr. Engle directing your attention to August 30, 1973, do you recall whether or not you went to work on that day?

A Yes, I did.

Q That was a t the Air Brake Company?

A That's right.

Q And do you recall by what mode of transportation you went to work?

A Yes, I drive my car.

Q And do you recall where you parked your car on that day?

A Yes, I parked in my assigned space in the company garage.

Q Now does the company garage have a name by which it is generally known in the community?

A Yes, it is called commonly the Arena Garage.

Q And are only certain individuals supposed to park their cars at the Arena Garage?

A Yes, that's right, it is generally the level of Supervisor and above.

Q Those who are at a level of Supervisor and above?

A There's assigned space for us.

Q Now do you recall the time of day that you arrived at the Arena on August 30?

A Between 8:15 and 8:45 in the morning.

Q And are you familiar with the assigned parking spot in the Arena of an individual named Charles Hart?

A Yes, I am.

Q And who is Charles Hart?

A He is my immediate Superior, he is Chief Engineer.

Q Now on the morning of August 30 when you arrived at the arena, do you recall whether there was an automobile on -- in Mr. Hart's assigned spot?

A Yes, there was.

Q And are you familiar with the automobiles that are owned by Mr. Hart?

A I am.

Q And are you familiar with the automobiles that are owned by Mr. Hart as of August 30?

A Yes, I am.

Q And what kind of cars, can you describe those cars?

A Sure, he owned at that time and still does in fact a ford LTD four door, black, and a beige Pinto. In addition his daughter owns a Volkswagon which is sometimes in those spots.

Q Do you recall whether or not Mr. Hart went to work on August 30?

A No, he didn't.

q He didn't go to work at all that day?

A No, he had told me the previous night that he had an appointment in Washington and would not be there.

Q Can you describe for us the vehicle that was in Mr. Hart's assigned spot that morning?

A Yes, I can, it was a red convertible, dirty, rather old, by old I would say ten years or so, possibly as few as four, possibly as many as fifteen, in not too good shape, rather large car. There was damage to the left front hood. It had brand new license plates on it.

THE COURT: What was the make?

THE WITNESS: I can't tell you that.

BY MR. LOWE:

Q Had you ever observed this automobile in the Arena Garage prior to August 30?

A No.

MR. LOWE: That's all I have, Your Honor.

CROSS EXAMINATION BY MR. CLARY:

Q Just a few questions, Mr. Engle. What time of the day did you come to work?

A As I previously stated, between 8:15 and 8:45 in the morning.

Q I am sorry, I didn't catch that. That was on August 30?

A Yes.

Q Did you park near Mr. Hart's spot?

A Yes.

Q And --

Q (Interrupting) There's one parking space between my spot and his, and that belongs to Ed Cambaker.

Q On the morning of the 30th was there anyone assigned, a guard, someone assigned by the New York Air Brake Company to police this garage area?

A The garage area is under the supervision of our plant security department, however, to answer your question more directly, there is no

* * * * *

THE COURT: With a direct road connecting the two spots?

THE WITNESS: Yes, the road is direct.

THE COURT: All right.

MR. CLARY: I have nothing further, Your Honor.

MR. LOWE: I have nothing further, Your Honor.

THE COURT: You are excused.

(Witness excused.)

THE COURT: Well, we will recess now until 2:15. Don't talk about the case, don't let anybody talk about it with you.

(Thereupon the luncheon recess was taken.)

AFTERNOON SESSION

(The following proceedings took place at the bench out of the hearing of the Jury.)

MR. LOWE: The Government would propose to call as its first witness James Gaither who is the individual about whom we had the discussion in Chambers this morning. I believe Mr. Clary has had an opportunity to talk to the witness and to review certain Government records that were made available to Mr. Clary.

MR. CLARY: Yes, I have been provided some

records about a bank robbery Gaither was involved in. I have also talked with him. I still would on behalf of the defendant object on the grounds that we weren't informed prior to trial of the possible witness who will testify to admission allegedly by the defendant made. I think under those circumstances it is prejudicial during the course of the trial to let him testify.

THE COURT: The Court offered this morning to give you an opportunity to keep this witness off the stand and suspend for a day and you can investigate it.

MR. CLARY: I don't think -- we have checked his record --

THE COURT: His criminal record?

MR. CLARY: Yes.

THE COURT: There isn't any doubt to suspect what the Government shows you?

MR. CLARY: No.

THE COURT: What is the record?

MR. CLARY: This and one other problem he was indicted for or he was arrested for but not convicted, as I understand it.

THE COURT: An arrest you wouldn't be able

to show anyway.

MR. CLARY: I am aware of that.

THE COURT: You can show a conviction.

MR. CLARY: Yes.

THE COURT: If there is anything you think -- do you want more time? I will give you as much time as you need until you definitely make up your mind that you want to investigate or that you don't.

MR. CLARY: I can't here think of -- I can't think of anything else that I would be able to come up with at this point of the trial.

THE COURT: We can suspend this trial.

MR. CLARY: I understand that.

THE COURT: I will suspend it until Monday if need be so you can investigate it the way you think you should. At least we can keep this witness off the stand until then if you want to investigate him or if your client has given you any leads.

MR. CLARY: I don't really think that this would benefit me. I think the delay would be harmful in itself.

THE COURT: I won't delay the trial, we will keeping going, just keep this witness off.

MR. CLARY: If possible I would like to have a sheet on his record, if the FBI is in possession of any.

THE COURT: Do you have the wrap sheet?

MR. LOWE: I don't have one in my file.

THE COURT: Does your office have one?

MR. CLARY: The United States Attorney?

MR. LOWE: The United States Attorney's Office does not. I imagine the FBI would, and I could have someone check that right now.

THE COURT: Keep him off the stand at this point until you see if he has a criminal record, so he can use it to impeach him, and if you want to investigate further you let me know.

MR. LOWE: In that respect I don't think we will take too long. I would read in some testimony and put on FBI Agent Rene Dumaine.

THE COURT: Then are you in position to rest?

MR. LOWE: No, there is one other witness that the Government would put on who had to appear before the Grand Jury in Watertown today. Even if the defense started today I will put that witness on out of order.

THE COURT: I wouldn't like that in a

* * * * *

called as a witness on behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Are you employed Mr. Dumaine?

A Yes, sir, I am.

Q By whom?

A Federal Bureau of Investigation.

Q And how long have you been with the FBI?

A About 23 years.

Q Are you assigned at the present time to any particular office of the FBI?

A Yes, sir, I am assigned to the Albany, New York office.

Q Did you participate in any way in the investigation of the bank robbery at the Marine Midland Bank in Pamelia, New York on or about August 30, '73?

A Yes, sir, I did.

Q And directing your attention to September 13, 1973 did you participate in a lineup proceeding on that date?

A Yes, sir, I conducted the lineup at the Jefferson County Jail, Watertown, New York.

Q And was it in any particular room at the

Jefferson County Jail?

A Yes, sir, in the Secretary's Offices to the Under Sheriff.

Q And could you describe that room for us?

A Well, it is a medium size room, it has several desks in it. As you enter the room on your left is a wall with I think there were several file cabinets along the wall, and on your right is another wall and a doorway into the Under Sheriff's Office. In that wall is a two way mirror the back of which opens into the Under Sheriff's Office.

Q I will hand to you Mr. Dumaine what has marked - has been marked and received as Defendant Exhibit B, can you tell us what that is?

A Yes, sir, this is a photograph of the lineup as I conducted it at Jefferson County Jail.

Q And is that a photograph of the individuals who participated in the lineup?

A Yes, sir, it is.

Q Is that a fair and accurate representation of the individuals as they appeared in the lineup on that day?

A Yes, sir, it is.

Q Is one of the participants Raymond Leo Cowles?

A Yes, sir, number three man in the lineup.

Q Now where were these individuals who are pictured in that exhibit standing in the context of the room you described for us?

A In the secretary's office they were standing on the left wall facing the two way mirror on the right wall.

Q And where would the witnesses have been standing?

A They were inside the Under Sheriff's office.

Q Now was Mr. Cowles represented by an attorney during this proceeding?

A Yes, sir, he was.

Q And do you know the name of the attorney?

A Yes, sir, Terry Germaine.

Q And were any changes made in the lineup at the request of Mr. Germaine?

A Yes, sir, there were.

Q What were those?

A Two men were changed in the lineup, and also I used my glasses on one of the participants and Mr. Germaine's on one of the other participants.

Q When you say two man were changed, what do you mean?

A Well, originally there were six. Mr. Germaine objected to two of the participants, and one

of the officers in the jail brought out two other prisoners to put in the lineup.

Q And was this done before or after the witnesses had observed the lineup?

A This was all done before.

Q Now were you present when the witnesses did observe the lineup?

A Yes, sir, I was.

Q And did you give any instructions to those witnesses?

A Yes, sir, I told the witnesses not to discuss among themselves the lineup or the results. They were told to come individually forward and view the lineup through the two way mirror, and at such time to write down the number of the man that they identified as the robber or saw as a participant in the bank robbery, and give this slip of paper to me after they had signed it.

Q Did you give them any advice or instructions with regard to taking a second look?

A Yes, sir, I told them if at first they weren't sure or they desired a second look, that they could do so.

Q And did there come a time when the various witnesses did step forward and looked through the

mirror?

A Yes, sir, there was.

Q And what role did you play as the witnesses would step forward?

A I would stand to the back or rear of the witness so that the other witnesses behind me in the room could not see what was happening, and merely told this person, the individual, male or female, to write down the number of the person that he believed to be the participant in the bank robbery or the man they had seen.

Q Now did Mrs. Jane Schultz step forward and view the lineup?

A Yes sir.

Q Did she write number down?

A She wrote down the number three.

Q And who was number three?

A Raymond Leo Cowles.

Q Did Donald Schultz step forward and view the lineup?

A Yes, sir.

Q Did he write down a number?

A He wrote down the number three.

Q Did Jeffrey Potter step forward and view the lineup?

A Yes, sir, he wrote down the number three.

Q Did Mrs. Palmer step forward?

A Yes, sir, she did, and she wrote down the number three.

Q The number three was Raymond Leo Cowles?

A Yes, sir.

MR. LOWE: That's all I have.

CROSS EXAMINATION BY MR. CLARY:

Q Mr. Dumaine, did you make a report in writing of your part of this investigation?

A Yes, sir.

MR. CLARY: Is there a copy of that report?

(A document marked Exhibit 3505 for identification.)

MR. LOWE: I am handing 3505 to the defense counsel.

BY MR. CLARY:

Q Mr. Dumaine, would you identify for the Court and Jury if you can the names of the individuals in the lineup beginning from the left and going to the right, and then would you give us their birth date?

A I have to do that from notes.

Q All right.

A Number one individual is Douglas Snyder, date

* * * * *

Q Just one further question, you referred to a George Eiss?

A Yes.

Q Did George Eiss write down a name on a sheet of paper after he reviewed the lineup, did he?

A Yes, sir, he wrote down the number three.

Q That is the defendant?

A Yes, sir.

MR. LOWE: That's all.

THE COURT: You are excused.

(Witness excused.)

MR. LOWE: The Government has nothing further at this point subject to the earlier discussion.

THE COURT: Well, we have some legal problems we have to work on, so I will excuse the Jury until tomorrow morning at 10:30.

(Jury was excused and the following proceedings took place out of the hearing of the Jury.)

THE COURT: Do you have any idea how long it will take to get the record of the man?

MR. LOWE: I suspect I can have it this afternoon, the rap sheet.

THE COURT: And have you decided whether

you want to do any further investigating?

MR. CLARY: I would assume after I receive that I don't have anything else that I can really investigate that I know about.

THE COURT: Your client is able to give you any leads to track down --

MR. CLARY: No, not really.

THE COURT: Well, you get the rap sheet and be sure that Mr. Clary sees it before we start tomorrow, and unless you have something further to bring to my attention that you want to investigate I am going to let the witness testify.

MR. CLARY: Yes.

THE COURT: If you advise me before the taking -- before he takes the stand and I will give you a reasonable time to ferret out --

MR. CLARY: This would give me some time, I was rather rushed over the noontime.

THE COURT: I don't want to rush you. We will take tomorrow off if you feel it would be helpful to you in investigating this.

MR. CLARY: O.K.

THE COURT: All right, recess until tomorrow morning.

(Thereupon a recess was taken to February 7,

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Proceedings, dated 2-7-74. 247

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

- -

-UNITED STATES OF AMERICA -

- -

- -against- -

- -

-RAYMOND L. COWLES -

- -

Criminal No. 73-CR-167

The following proceedings took place at the United States District Court, Federal Building, Utica, New York, continuing on the 7th day of February, 1974 before HONORABLE LLOYD F. MacMAHON, United States District Judge, sitting by designation.

A P P E A R A N C E S:

JAMES M. SULLIVAN, JR.
United States Attorney
GEORGE LOWE
Assistant United States Attorney
Of Counsel
Attorney for U. S. of America
Federal Building
Syracuse, New York

DEFENDANT IN PERSON and by
LEE CLARY, ESQ.
Attorney for Defendant
Watertown, New York

(The following proceedings took place out of the presence of the Jury.)

THE COURT: Mr. Clary, have you been provided with the report on the witness the Government intends to call?

MR. CLARY: Yes I have, Your Honor.

THE COURT: Do you require any further information?

MR. CLARY: No, Your Honor, nothing that I can think of.

THE COURT: Any further investigation?

MR. CLARY: I don't believe so, Your Honor.

THE COURT: All right.

MR. CLARY: However, I still object as I did initially to the introduction of any testimony without notice prior to trial. I want the record to reflect that.

THE COURT: Your objection is noted and I note it.

MR. LOWE: For the record, Mr. George Eiss who had been subpoened by the Government and left the Court room yesterday is now in the Court room. Mr. Clary indicated yesterday he might want to put Mr. Eiss on as his witness.

THE COURT: All right, Mr. Eiss is available.

(The Jury was brought into the Court room and the following proceedings took place in the presence of the Jury.)

MR. LOWE: The Government calls James Gaither.

JAMES L. GAITHER

called as a witness on behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Jim, how old are you?

A 26.

Q And where are you residing or located at this time?

A In the Oneida County Jail.

Q Keep your voice up as much as you can.

THE COURT: At the Oneida County Jail?

THE WITNESS: Yes, sir.

BY MR. LOWE:

Q You are being held there on some kind of charge?

A Yes, sir.

Q What is that charge?

A Receiving stolen property.

Q And that charge of receiving stolen property is in connection with what incident?

A Robbery of the Middleville Bank.

Q Is that Middleville here in New York?

A Yes, it is.

Q And do you know the name of that bank in Middleville?

A Marine Midland.

Q And when did that occur?

A October 25, I believe.

Q And have you pleaded guilty or not guilty to that charge of receiving stolen property?

A I pleaded guilty.

Q Now do you know a man named Raymond Cowles?

A Yes, I do.

Q Is Ray Cowles in this Court room at this time?

A Yes, he is.

Q Where is he sitting?

A Immediately before you.

Q And is he the gentleman in -- on your left or your right?

A He is on my left.

Q Are you identifying this individual (indicating)?

A Yes, sir.

MR. LOWE: May the record reflect he has identified the defendant?

THE COURT: Yes.

BY MR. LOWE:

Q When did you first meet Ray Cowles?

A I believe it was November 17.

Q And what was the occasion of meeting Mr. Cowles on November 17?

A We were being transported by the US Marshalls to the Albany County Jail in Albany.

Q In other words, as of November 17 you were in jail here in Oneida County, is that correct?

A On the evening of November 17 we were incarcerated together in the Albany County Jail in Albany, New York.

Q And prior to that evening where had you been incarcerated?

A In the Oneida County Jail.

Q And prior to that evening where had Mr. Cowles been incarcerated?

A I understand he had been incarcerated in Watertown Jail.

Q Now who else was in this car on the trip to Albany from the Oneida County Jail?

A The two U.S. Marshalls who were transporting us and my brother.

Q And Mr. Cowles?

A Yes.

Q Was your brother involved in some way in the Middleville bank robbery?

A Yes, sir.

Q Has he pleaded guilty or not guilty to the charge connected with that bank robbery?

A Guilty, sir.

Q During the car ride to Albany was there any discussion between you and Mr. Cowles concerning the charges which had been lodged against him?

A Yes, there was.

Q And what did he tell you about -- what charges did he tell you had been lodged against him?

A He told me that he was being held in connection with the robbery of a bank in Watertown.

Q And was there any discussion between you and Mr. Cowles as to the charges that were lodged against you?

A Yes, there was.

Q Did you tell him what those charges were?

A Yes, I did.

Q The robbing of the Marine Midland Bank in Middleville?

A Yes, sir.

Q Now where were you taken when you got to Albany?

A To the Albany County Jail.

Q And were you assigned to a cell at the Albany County Jail?

A Yes, I was.

Q Did you share that cell with anyone?

A No, I did not.

Q Did you ever have an opportunity while you were being held at the Albany County Jail to mix with any of the other prisoners?

A Yes, I did.

Q And in what situations, what kind of situation would arise when you would be able to?

A Most of the daylight -- most of the normal daytime hours our cells were open and all the prisoners in the cell block could mix.

Q In other words all the persons in a particular cell block were able to mix with each other? Was Mr. Cowles in the same cell block as you were?

A Yes, Mr. Cowles was in the same cell block and we were able to mix.

Q And approximately how many other prisoners shared that cell block?

A I believe about 12 or 14.

Q Now you testified that you and Mr. Cowles arrived at the Albany County Jail on November

17, is that correct?

A I believe it was that date.

Q And do you recall how long you stayed at the Albany County Jail?

A I stayed there about a week.

Q Now during the occasions you had an opportunity to mix with the other prisoners in the cell block, did you ever have occasion to talk to Mr. Cowles?

A Yes, I did.

Q And on any of these occasions did the subject of the Watertown Bank robbery come up?

A Yes, it is true, it did.

Q And on any of these occasions did the subject of the Middleville Bank Robbery come up?

A Yes.

Q Did you at any time admit to him that you had in fact commited the Middleville Bank robbery?

A Not exactly commited the robbery, I admitted I was guilty of receiving some money.

Q In other words, did you admit to him your role in the bank robbery?

A Yes, I did.

MR. CLARY: Well, Your Honor, I move to strike that, I don't see any relevancy in that testimony whatsoever.

THE COURT: I can't tell whether it is relevant or not. I will reserve on a motion to strike it until I hear all the conversation. Perhaps we could proceed by asking him what the conversations were, what you said and what Cowles said, I think that would be better.

BY MR. LOWE:

Q Can you tell us what was said between you and Mr. Cowles concerning your role in the Middleville Bank robbery?

MR. CLARY: Well, again Your Honor, I object.

THE COURT: Sustained, and strike the preceding answer.

BY MR. LOWE:

Q Now, Jim, did there come a time when you left the Albany County Jail?

A Yes.

Q And you said that was about a week after you had arrived there?

A Approximately, yes.

Q And where did you go at that time?

A Back to the Oneida County Jail.

Q And did Mr. Cowles accompany you on the trip back to the Oneida County Jail?

A No, sir.

Q Did you ever have occasion to see Mr. Cowles again?

A Yes, sir.

Q And where was that?

A In the Oneida County Jail.

Q And when?

A Several days after I returned there to that jail.

Q And do you know why he was --

THE COURT: When was that? Can you help us? What month was it? Several days after your return there doesn't help us to fix the time. When?

THE WITNESS: It was right about the end of November.

THE COURT: November 1973?

THE WITNESS: Yes, sir.

THE COURT: All right.

BY MR. LOWE:

Q And do you know why Mr. Cowles was at the Oneida County Jail at that time?

A He was awaiting being held over waiting transport to the Watertown Jail.

Q Now when you first saw him back at the Oneida

County Jail did you have a conversation with him?

A A brief one, yes.

Q And what was said?

A I asked him what happened concerning his trial. He told me that his trial had resulted in a hung jury.

Q And did you have any further discussion with him at that time?

A Yes, we talked some more, yes.

Q And what was said?

A Basically the conversation referred to possibilities resulting from the hung jury.

Q And then did you have a further discussion with Mr. Cowles on the evening on the first day that he was back in the Oneida County Jail?

MR. CLARY: I am going to object as leading.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. LOWE:

Q And what did you say to him at that time?

A I don't recall the evening he came back, I don't recall.

Q Did you have a conversation with him the second night after he returned to the Oneida County

Jail?

A Yes.

Q What was said in that conversation?

MR. CLARY: I am going to object unless we establish where the conversations took place, who was there, and I think there has been no foundation for this testimony.

THE COURT: Overruled.

BY MR. LOWE:

Q What was said in your conversation the second night after Mr. Cowles had returned to the Oneida County Jail?

A Basically I asked him was he really involved in the robbery, and he replied to me, "hell, yes," he said, "but I am not going to tell them that."

MR. CLARY: I move to strike, Your Honor, on the grounds that this is incompetent, irrelevant, there's been no proper foundation.

THE COURT: Overruled.

BY MR. LOWE:

Q He said "Hell, yes, but I am not going to tell them?"

A Yes.

Q Where did this conversation take place?

A In my cell.

Q At this period was Mr. Cowles sharing the cell with you?

A No, sir, he was not.

Q How did he have access to your cell?

A Well, the doors of all the cells were open most of the day time.

Q Was anyone else in the cell with you at that time?

A No, sir.

Q Did you inquire of Mr. Cowles as to the involvement of any other people in the Watertown bank robbery during that conversation?

MR. CLARY: Same objection.

THE COURT: Overruled.

THE WITNESS: Yes, briefly, I didn't push it.

BY MR. LOWE:

Q What was his response when you briefly made an inquiry?

A He made generally evasive answers.

MR. CLARY: I object to that, move to strike it.

THE COURT: Yes. What did he say? Strike the answer. What did he say? Don't

characterize what he said.

THE WITNESS: When I asked him if his partners were going to help him out or anything he would just shrug.

BY MR. LOWE:

Q Now --

MR. CLARY: Your Honor, I move to strike that, that is not a conversation.

THE COURT: Overruled.

BY MR. LOWE:

Q Now did there come a time, Jim, when you told someone you had some information concerning Ray Cowles?

A Yes.

Q Who did you tell that to?

A My attorney.

Q Did there come a time when you talked to anyone else about the information concerning Ray Cowles that you had?

A I believe I mentioned it to the U.S. Marshalls when I was being transported at one time.

Q And did there come a time when you talked to anyone in addition to the marshalls about the information you had?

A Yes, sir.

Q Who was that?

A Yourself and Agent Cole of the FBI.

Q And do you recall when you and I and Agent Cole had that discussion?

A I believe it was December 28.

Q And did anything else occur on December 28?

A Yes, that was the day my brother and I pleaded guilty to our charges.

Q And did you talk to Agent Cole and myself after you pleaded guilty or before?

A After.

Q Had you ever talked to me, had you ever seen me before you pleaded guilty?

A No, sir.

Q Had you ever talked to Agent Cole or had you ever seen him before?

A No.

Q Before you pleaded guilty?

A No, sir.

Q Have you talked to any other representative of the Government about what you know about Mr. Cowles, other than myself, FBI Agent Cole and the Marshalls?

A No, I have not.

Q And did we promise you anything for you to come

in and testify here this morning?

A Only the fact of my cooperation would be mentioned to the Judge in connection with my sentencing.

Q Did we make any kind of promise to you as to what kind of sentence the Judge would give you?

A None whatsoever.

MR. LOWE: That's all I have..

CROSS EXAMINATION BY MR. CLARY:

Q You talked to Mr. Lowe and Mr. Cole, did you not, Mr. Gaither, on December 28, 1973?

A Yes, sir.

Q That was the day you pled guilty to bank robbery, isn't that right?

A I pled guilty to receiving proceeds of a bank robbery.

Q 2113C of the Criminal Code, Federal Criminal Code.

A I am not acquainted with that.

Q That is what you entered a plea to, wasn't it?

A I don't recall the number.

Q How long after you entered the plea did you talk to Mr. Lowe and Mr. Cole?

A Probably half an hour.

Q So it was pretty much the same time you entered

the plea you went on over and talked to them, isn't that true?

A They came and talked to me in the holding cell in the U.S. Marshalls office.

Q You know Agent Cole, do you not?

A I met him.

Q Is he here in the Court room?

A Yes, he is.

Q Will you point him out please?

A He is the man sitting on the end of the bench back there, the first bench.

Q You identify him as this individual right here (indicating)?

A Yes.

Q And Mr. Lowe, of course, is at the counsel table?

A Yes.

Q Did you talk to anybody else on that day?

A My wife.

Q I mean during the conversation that you had with Mr. Lowe and Mr. Cole, was anyone else present?

A My brother.

Your brother John?

A Yes.

Q He was the bank robber, wasn't he, in Middleville?

A Yes.

Q Did it with a gun, didn't he?

A Yes.

Q What kind of a gun?

A .22 caliber gun.

Q You knew he was going to rob that bank before he did it, too, didn't you?

A Yes.

Q In fact you planned to meet afterwards and split the money or hide the money, didn't you?

A That's correct.

Q Did you tell Mr. Cole and Mr. Lowe when you gave them the summary or some idea of what you did or what you conversations were with Mr. Cowles, did you not?

A Yes, I did.

MR. CLARY: Do you have a copy of whatever --

MR. LOWE: Could this document be marked Government's Exhibit 3506?

(A document marked Government's Exhibit 3506 for identification.)

MR. LOWE: May the record reflect I am handing to defense counsel Exhibit 3506.

BY MR. CLARY:

Q Mr. Gaither, I show you what has been marked as Exhibit 3506 for identification and ask you if you can read that over to yourself. It may be a little hard because it is a photocopy.

A Yes.

Q Did you read that over?

A Yes.

Q And is that a fair and accurate summary of what you told Mr. Cole and Mr. Lowe on December 28, 1973?

A Yes.

Q Is there anything in that summary concerning Raymond Cowles saying, "Hell, yes, I did it, but I am not going to tell anybody about it?"

A I don't see anything.

Q There is nothing in there about that conversation is there?

A No.

Q That is a summary made on December 28, 1973, is that right?

A Yes, it is.

Q Was that the day of the conversation?

A Yes.

Q And the summary contains no such statement that

you say Raymond Cowles made to you?

A No, sir.

Q So you didn't tell Mr. Lowe and Mr. Cole that day about this conversation, did you?

A Yes, I did.

Q You did?

A Yes, sir.

Q And they didn't record it?

A Apparently.

Q Are you telling us, Mr. Gaither, now, all the conversations that Raymond Cowles had with you?

A No, sir, we talked a great many times.

Q And you are leaving out a few conversations, aren't you, that you had?

A I haven't been asked about them.

Q All right, I am going to ask you about them. How long were you down in the Albany County Jail with Raymond Cowles?

A About a week.

Q Could it have been ten days to two weeks?

A No, sir.

Q Did you tell Agent Cole and Mr. Lowe on December 23, 1973 that you saw Raymond Cowles at the Albany County Jail daily for ten days to two

weeks?

A No, sir.

Q You didn't say that?

A No.

Q I point your attention to item two and ask you if you can read that over to yourself?

A Yes.

Q Does that refresh your recollection as to what you told Mr. Cole and Mr. Lowe on that date?

A Yes, sir.

Q What did you tell them?

A I told them I had been confined with RayCowles in the Albany County Jail for approximately one week.

Q Yet this says you saw him daily from ten days to two weeks?

A That's what it says.

Q While you were at the Albany County Jail you and Raymond Cowles talked, did you not?

A Frequently, yes.

Q Did you ask him whether or not he was involved in the robbery in Watertown during that time?

A Yes, sir.

Q How many times?

A Two or three, I couldn't say for sure.

Q More than once?

A Yes.

Q Several times.

A Possibly.

Q And what was his response?

A Usually he would either say no or just shrug and grin at me.

Q In fact he denied being involved?

A That is true.

Q He told you, no, he wasn't, isn't that true?

A That is true.

Q And that is at the Albany CountyJail?

A Yes.

Q Did he ever tell you at the Albany County Jail he was involved in this bank robbery in Watertown?

A No, sir.

Q Did he tell he was involved in a bank robbery in Watertown on the way down from Utica to Albany?

A No, sir.

Q How many individuals were involved in this bank robbery in Middleville?

A Just two.

Q That is, you and your brother, is that right?

A Yes.

Q No one else?

A No, sir.

Q And you pled guilty on December 28, 1973?

A Yes, sir.

Q And you have not been sentenced yet, have you?

A No, sir.

Q Are you awaiting sentence?

A Yes.

Q Do you know when sentencing is going to be?

A We haven't been informed.

Q Is it going to be right after this trial?

A I don't know for sure, we haven't been informed through our attorneys yet.

Q Do you have any idea when sentencing is going to be?

A I understand the Judge that is going to sentence us is sitting this coming Monday.

Q This coming Monday?

A Yes, sir.

Q Now you stated, I believe Mr. Gaither, in answer to questions by Mr. Lowe that there were about 14 people in cell blocks down in Albany?

A In our particular tank, yes, sir.

Q And you mixed frequently, did you?

A Yes, sir.

Q And not just you and Mr. Cowles then, I take it?

A No, sir.

Q And did you ever hear Raymond Cowles admit to anyone else in the cell block in Albany that he was involved in any way in this bank robbery?

A No, sir.

Q Did you hear him deny it to anybody else?

A I don't believe so.

Q Was your brother there in that cell block with you?

A No, he was not.

Q But you were in the same cell block with Raymond Cowles in Albany and then again in Utica?

A Yes.

Q Have you been in the same cell block with Raymond Cowles during February 1974?

A No, sir.

Q Not in the same cell block?

A No, sir.

Q Mr. Gaither, have you lied before concerning your criminal activities to any police officials?

A Yes, sir.

Q And isn't it a fact that at first you denied your participation in this bank robbery in

Middleville?

A Yes, sir.

Q That was a lie, wasn't it?

A It was.

Q You were involved?

A That's right.

Q Deeply involved? Is that right?

A That's correct.

Q Before and after the robbery?

A Yes, sir.

Q You had planned it with your brother, hadn't you?

A No, he planned the robbery.

Q He told you about it, didn't he?

A Yes he did.

Q Told you about casing another bank in Edmonton?

A That's correct.

Q You knew abut that?

A Yes.

Q Then did he make some decision to go for the Middleville Bank?

A Yes, he did.

Q So you knew all about it, didn't you?

A Yes.

Q And you lied about that participation? You

lied about it to the police when you were first asked about it, didn't you?

A Yes, sir.

Q And when did you change your story?

A A few hours after the police came to talk to me about it.

Q You changed your story after they searched your apartment?

A They had searched it but they didn't find anything.

Q Did they find some money from your wife?

A That I believe was later, sir.

Q Then you admitted your participation, didn't you?

A Yes, I did.

Q Gave confession to the police, did you not?

A That's correct.

Q Now Mr. Gaither how long you -- how long were you and Raymond Cowles in the cell back in Utica in November '73?

A I think three -- four days, about four days.

Q And you said you had some conversations about his trial?

A Yes, we did.

Q And did you have conversations on every day that you and he were back here in Utica together?

A I believe so.

Q Now you weren't in the same cell?

A No, sir.

Q Everyone has his own cell, I take it.

A That's correct.

Q And then do you mix during the day as you told us you did down in Albany?

A Yes, sir.

Q Pretty much the same arrangements?

A Pretty much, yes, sir.

Q So there were other people there, weren't there?

A Yes, sir.

Q How many others in the cell block in Utica?

A 10 or 12.

Q And did Raymond Cowles talk to these others?

A I believe so.

Q And -- or did he only confide in you?

A Well, he talked to me and I am pretty sure he talked to other people up there.

Q He talked to others in the block, did he not? You didn't know Raymond Cowles before November '73, did you?

A No, sir.

Q Now this conversation -- strike that. Did Raymond Cowles at any other time during these

four times back in Utica admit any involvement whatsoever in this bank robbery?

A No, sir, he did not.

Q Did he deny any involvement?

A Not specifically that I recall, sir.

Q You asked him several times, though, was he involved when you were back in Utica?

A Yes, I believe I did.

Q And he never said he was except you say on this one occasion?

A Yes, sir.

Q And the one occasion that you say he said something about it, there is nothing contained about that whatsoever in the summary, is there?

A No, sir.

Q Mr. Gathier, were you out of jail on August 30, 1973?

A Yes, I was.

Q How long had you been confined on this bank robbery charge?

A About fourteen weeks.

Q Since sometime when?

A October '73.

Q October of '73?

A Yes.

Q You have been confined continuously since then?

A Yes, I have.

Q Do you remember the date you started your confinement?

A I believe it was October 25.

Q And so you were out of jail on the 30th of August?

A Yes, I was.

Q Was your brother out of jail?

A Yes, he was.

Q You wouldn't have happened to be in the Marine Midland Bank robbery in Watertown, were you, Mr. Gaither?

A No, sir.

Q You weren't?

A No, sir.

Q Who was present during this conversation that you told the Court and Jury about?

A Outside the cell there were several other prisoners watching television.

Q Were you watching television at the time?

A We were both watching television and conversing a little, then watched television. I don't pay much attention to television.

Q So there is a television set out near your cell?

A Yes.

Q Outside in some hall or something?

A Right.

Q And there were several others watching television together with you in the cell with Raymond?

A Yes, sir, they were outside the cell.

Q Do you know who they were?

A Yes, sir.

Q All right, will you tell us who some of those individuals were?

A Duane Armstrong, Verner Hatch, I don't recall any of the other names.

Q Were they within hearing distance of you?

A In theory only, the acoustics -- because of the structure of the cells is very poor.

Q They could have heard you?

A They could have, I don't believe did -- I don't believe they did.

Q You didn't whisper to each other, did you?

A No, sir, but we usually talked pretty low so we wouldn't disturb anyone else watching television.

Q I am not interested in what you usually did, I am interested in what you did on that occasion.

A We were talking in pretty low tones.

Q Now did Raymond laugh or smile when he said that?

A He gave me a grin, yes, sir.

Q Is it possible he could have been kidding?

A I suppose.

MR. LOWE: I object to the form of the question.

THE COURT: Sustained.

MR. CLARY: Your Honor, I take exception, I think that is relevant.

THE COURT: It calls for the operation of his mind. Find out what he asked, what he said.

BY MR. CLARY:

Q Let me ask you this first, do you know what was on the television set?

A No, sir, I don't.

Q You have no recollection whatsoever of that?

A I believe it was a cops and robbers type program, I don't recall specifically the name of the program.

Q And do you remember what day this was?

A I believe it was a Saturday.

Q Saturday?

A Yes, sir.

Q When did Raymond come to the Oneida County Jail

for the second time?

A If I recall correctly it was a Friday, but I am not really sure, sir.

Q Friday?

A I think so, I don't recall for sure.

Q And you are not sure of that?

A No, sir.

Q Could have been a Wednesday?

A It could, time kind of runs together when you are in jail.

Q Time hangs heavy, doesn't it?

A Very.

Q And you have been in jail for quite a while, haven't you?

A Three and a half months.

Q Do you consider that quite a while, a long time?

A Yes.

Q Now what did you say to Mr. Cowles on the occasion of this conversation that you told us about, how did it come about, how did you arrive at this conversation?

A There was some activity on the television and I believe he remarked "We wouldn't handle it like that," or "I wouldn't have handled it like that," or something to that effect, and I asked

him --

Q (Interrupting) So at this point --

MR. LOWE: I object, you asked the question, let him complete the answer.

MR. CLARY: The question was how did the conversation come about? I will wait.

THE WITNESS: Well, I asked him the words specifically -- I am not specific on it but it was to the effect "were you indeed involved in that bank robbery or in driving the getaway car?"

BY MR. CLARY:

Q And you had asked him that question a number of times before, hadn't you?

A I don't belive I came out in so many words and say "Did you indeed drive the getaway car?" I did ask him, "Did you do it?"

Q All right, you asked him several times before if he did it?

A Yes.

Q Were you a detective? What was the purpose of all these questions?

A Curiosity initially.

Q Then did it turn to something else?

A Well, I hoped maybe I could help myself.

THE COURT: At that time were you awaiting

the trial on your own case?

THE WITNESS: Yes, sir.

THE COURT: And you hadn't pleaded guilty at that time?

THE WITNESS: No, sir.

THE COURT: Were you curious about what might happen to a person involved in a bank robbery?

THE WITNESS: Very, yes, sir.

BY MR. CLARY:

Q I believe you testified, Mr. Gathier, you hoped you would help yourself out?

A Yes, sir.

Q That is the reason you kept persisting in these questions, did you not?

A Yes, sir.

Q You hoped that maybe you could get Raymond Cowles some time to trick himself so you could help yourself out of a bank robbery charge, isn't that true?

A Yes, sir.

Q You weren't concerned about Raymond Cowles, were you?

A Not especially, sir.

Q You were concerned about James Gaither, were

you not?

A Yes, sir.

Q And that was your concern, your sole concern, was it not, Mr. Gaither?

A My sole concern was the welfare of my wife and son.

Q And that is connected directly with your getting out of jail?

A Yes, sir.

Q That was your concern during this time?

A Yes, sir.

Q Mr. Gaither, what did Mr. Cowles -- strike that. You say that there was some cops and robbers show on and Mr. Cowles said something about he wouldn't have handled it that way or something like that?

A Yes.

Q So you were watching television, weren't you?

A On and off, yes.

Q At least Mr. Cowles must have been watching television, is that correct?

A I would assume so.

Q Or he wouldn't have made any statement like that?

A That's correct.

Q And the others were watching television?

A Yes.

Q What did he say to you?

A I believe he said he wouldn't have done it like that.

Q And then you asked him the question?

A Yes.

Q And that you said was designed to help yourself, is that right?

A Yes, sir.

Q And what did he respond?

A His exact response was, "Hell, yes, I did it but I am not going to tell them that."

Q And you told that to Mr. Lowe and Mr. Cole?

A Yes, I did.

Q And they didn't record it?

A Apparently not, sir.

Q Have you told us all the conversations you had with Mr. Lowe?

A No, sir.

Q You had another one, didn't you?

A Yes, sir.

Q When was that?

A Oneida County Jail.

Q When?

A About a week ago.

Q About a week ago?

A Yes, I believe it was last Friday.

Q Who else was present?

A Mr. Cole.

Q Same two people you talked to before?

A Yes, sir.

Q Anybody else?

A Just myself.

Q And what was said on that occasion?

A Mr. Lowe briefed me on what would occur in the Court, asked me some questions that he felt you would ask.

Q Prepared you for cross examination, is that right?

A Possibly, yes.

Q Asked questions such as I am asking you?

A Well, he didn't get quite as involved as you are.

Q He might have a little different motive, wouldn't he?

A Yes, sir.

Q You understand I represent the defendant Raymond Cowles, don't you?

A Yes, I do.

Q I believe you said, Mr. Gaither, that when Mr. Cowles made the statement to you that is not

recorded anyplace in writing, that he grinned or smiled, shrugged his shoulders, is that your testimony?

A Yes.

Q And my question to you, Mr. Gaither, would be, it is a possibility this conversation was in jest.

MR. LOWE: I object, anything is possible, it calls for the operation of his mind.

THE COURT: Yes, you are asking for an opinion.

MR. CLARY: Well, Your Honor, I wasn't there, I don't know what the conversation was that took place, I am asking Mr. Gaither if he thought --

THE COURT: I am quite aware of the fact you weren't there. I am quite aware of the fact you don't know what the conversation was. I am also aware of the fact your questions must be proper, Mr. Clary, and the ones you are asking are improper.

BY MR. CLARY:

Q Mr. Gaither, you have a wife, do you not?

A Yes, I do.

Q Married?

A Yes.

Q And have a child, do you not?

A Yes, I do.

Q And how old is your child?

A About two and a half years.

Q Where does your wife and child, where do they reside?

A They are presently living with my parents.

Q In what city?

A Lillington, North Carolina.

Q You want to get back with your wife and child, don't you?

A Yes, sir.

Q And you are willing to do about anything to do that, are you not?

A Willing within reason, sir.

Q Within reason. Did you have a conversation with me?

A Yes, sir.

Q That was yesterday, was it not?

A Yes, it was.

Q Didn't you tell me, Mr. Gaither, that you would do anything to get back to your wife and child?

A Basically that was the remark, yes, sir.

Q Didn't you also in fact remark to me that you would give your right leg to go back to your wife and child?

A Yes, sir, I did.

Q Isn't it possible that you are shading a truth a little bit here, Mr. Gaither, in order to accomplish that purpose?

A No, sir.

Q No possibility of your misunderstanding the conversation?

A No, sir, there is not.

Q Even though your motives are to get James Gaither out of Oneida County Jail?

A That's correct.

Q Just a couple of more questions if I may. I think you said you first mentioned the conversation to your attorney?

A Yes.

Q And I think you then told us you mentioned it to the U.S. Marshall when you were being transported?

A Yes.

Q Where were you being transported?

A We were --my brother and I were being transported over here to the Federal Court.

Q Do you recall when that was?

A Not specifically, it was after -- I am pretty sure it was after Ray Cowles had left the

Oneida County Jail.

Q You are pretty sure but you are not certain, is that right?

A That's correct.

Q Now why did you tell your attorney any conversation you had with Mr. Cowles?

A So that he would get in touch with the U. S. Attorney or whoever might be interested in order to help myself.

Q In order to help yourself?

A Yes, sir.

Q Didn't you ask the U. S. Marshall when you told him whether or not you could be helped by giving evidence against someone else in jail?

A I might have, I don't recall the conversation, sir.

Q You don't recall that?

A That specifically.

Q Mr. Gaither, to conclude, isn't it a fact that during the entire time you and Mr. Cowles were together at the Albany County Jail, he never said he was involved in any bank robbery in Watertown?

A That's correct.

Q And you asked him on several occasions down at

that jail?

A Yes, sir.

Q Specifically, right?

A Yes, sir.

Q And he said "No,"he said, "it wasn't me," is that right?

A I don't recall the exact words, but he did deny it, yes sir.

Q Now back in Utica you said I believe that on several occasions you asked him specifically again whether or not he was involved in the bank robbery?

A Yes, sir.

Q And he denied it on every occasion except one?

A Yes, sir.

Q According to you, is that correct?

A Yes, sir.

Q And did you not tell Mr. Cole and Mr. Lowe at that time, on December 28, 1973, that you were willing to testify and cooperate in hopes that your pending sentence would be affected?

A Yes, sir.

Q And that is the reason for your involvement in this case?

A Yes, sir.

MR. CLARY: That's all I have.

REDIRECT EXAMINATION BY MR. LOWE:

Q I am going to hand to you, Mr. Gaither, Exhibit 3506 which Mr. Clary showed to you and asked you to read, is that a verbatim transcript of your statements to Mr. Cole and myself?

A No, sir, it is not.

Q Is that a summary?

A Basically, yes.

Q Mr. Clary asked you several times whether there was any recording in that summary of the statement that you made to Mr. Cole and me concerning Mr. Cowles' involvement, is that correct, he asked you that question several times?

A Yes, sir.

Q Is there a statement in that report that Mr. Cowles actually admitted driving the getaway car?

MR. CLARY: I will object to that, Your Honor, I don't think that is proper, it is leading and suggestive, prejudicial.

THE COURT: Sustained. Strike it out. Disregard it.

MR.LOWE: The Government offers Exhibit 3506 in evidence.

MR. CLARY: Well, Your Honor, there are several things in this exhibit --

THE COURT: What is your objection?

MR. CLARY: I object, it is irrelevant, immaterial and it is incompetent.

THE COURT: Sustained on the last ground.

BY MR. LOWE:

Q Mr. Gaither, you testified that you had lied previously to law enforcement officials, is that correct?

A Yes, sir.

Q And that was in connection with the Middleville Bank robbery?

A Yes, sir.

Q And do you recall the date upon which you lied to these authorities?

A October 25.

Q And on what date did you admit to them your involvement in the robbery?

A October 25, '73.

Q The same day?

A Yes, sir.

Q Now you testified that you first met Ray Cowles on November 17, 1973 when you drove with him from Oneida to Albany, is that correct?

A That is correct.

Q You testified that during that car ride there was some discussion concerning the charges that had been brought against him?

A Yes, sir.

Q He told you it was in connection with the Watertown Bank robbery?

A Yes.

Q Did you have any other discussion with Mr. Cowles during that car ride?

A Briefly, concerning the charges against my brother and myself.

Q Any discussion at all concerning the Watertown Bank robbery?

A I don't recall specifically, sir.

Q Now on the 17th of November you were then lodged in the Albany County Jail, is that correct?

A That's correct.

Q And you then had conversations with Mr. Cowles on a daily basis?

A Yes, sir.

Q And during that period of time during the day where was Mr. Cowles?

A Usually he was in Court, sir.

Q He was in Court during the day?

A Yes, sir.

Q So you had your conversations with him at night?

A In the evening, yes, sir.

MR. CLARY: I don't see the relevance of where Mr. Cowles was to have anything to do with this particular case. I am going to object.

THE COURT: Overruled.

BY MR. LOWE:

Q Do you recall what day the 17th was, what day of the week that was?

A Friday.

Q Do you recall approximately when over at the Albany County Jail in relation to Friday the 17th, when you first discussed the Watertown Bank robbery with Mr. Cowles, was it the 17th?

A I believe it was that evening.

Q And then following that discussion that evening when was the next time you talked to him about the Watertown Bank robbery?

A There were many discussions, specifically I couldn't specifically say.

Q And did many of these discussions concern the trial that was taking place?

MR. CLARY: Again I object, improper.

THE COURT: Overruled.

THE WITNESS: Yes.

BY MR. LOWE:

Q You testified that your brother was not in the same cell block at the Albany County Jail?

A That's right.

Q And so he was not in the cell block with you and Mr. Cowles?

A That's right.

Q And how about here at the Oneida County Jail?

A My brother and I aren't together, we are separated.

Q Other than the Middleville Bank robbery, Jim, to which you have pleaded guilty, have you ever been convicted of any other crime?

A No, sir.

MR. LOWE: That's all, Your Honor.

RECROSS EXAMINATION BY MR. CLARY:

Q Mr. Gaither, is it possible that you did not tell Mr. Lowe and Mr. Cole on December 28, 1973 about this conversation concerning the TV?

A No, sir, it is not possible.

Q How many discussion or -- strike that. Would you give us your best judgment as to how many times you and Mr. Cowles talked about whether or not he was involved in this bank robbery in

Watertown at both Albany and Utica?

A It was quite a few times, sir.

Q Now would you say more than five?

A Yes, sir.

Q More than ten?

A I couldn't say for sure.

Q So at least -- and it could be as many as ten?

A Yes, sir.

Q And on one occasion you say he said "Hell, yes, I did it," is that right?

A Yes.

Q Mr. Gaither, how many cell blocks are there in the Oneida County Jail?

A There are four.

Q And how are people placed in those cell blocks, do you have any idea?

A By age, sometimes they are placed in a separate cell block because they have been sentenced and they are serving their time, other cell blocks are for prisoners awaiting sentencing.

Q Is it usual that Federal prisoners are put in the same cell block?

A I don't know.

Q But were you in the same block in Albany?

A Yes.

Q But not back here in Utica the second time?

A The second time, no, sir.

Q But the first time you were?

A Yes, sir.

Q Mr. Gaither, are you nervous about your sentencing that is coming up very shortly?

A Yes, sir.

Q And are you in a desperate position as far as far as sentencing goes, to get out of jail?

MR. LOWE: I object to the form of the question, it calls for a conclusion.

THE COURT: Well, I will allow it.

THE WITNESS: I don't know if I am actually -- if it fits the description of desperate, I am quite concerned.

MR. CLARY: Thank you. That's all.

MR. LOWE: That's all, Your Honor.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will take our morning recess at this point.

(A short recess was taken after which the hearing was resumed.)

MR. LOWE: The Government calls Louis Watson.

LOUIS W. WATSON

called as a witness by the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Mr. Watson, are you employed?

A Yes.

Q By whom are you employed?

A New York Air Brake.

Q And where is New York Air Brake located?

A Watertown, New York.

Q And were you employed by the Air Brake Company on August 30 of '73?

A Yes.

Q And directing your attention to that day, August 30, 1973, do you recall whether or not you went to work that day?

A Yes, I did.

Q And do you recall your mode of transportation to work?

A Yes.

Q What was that?

A I drove my car.

Q You drove your car?

A Yes.

Q Could you describe the car that you drove to work that day?

A 1965 blue Chevrolet Impala.

Q What is the license plate number of the car at that time?

A 9872JS.

Q And where -- were you the owner of that car at that time?

A Yes.

Q Do you recall the hour that you arrived at work that day?

A Between quarter to seven to seven o'clock, some place around there.

Q And is that morning?

A Yes.

Q And where did you park your car at that time?

A Over on the Pearl Street side of the parking lot.

Q The Pearl Street side of the parking lot?

A Yes.

Q Could you describe for us where the Pearl Street side of the parking lot is with relation to a building known as the Arena?

A It is about a half mile away from it, from the two parking lots, the Arena is on the other side, the other part of the parking lot, Starbuck.

Q And the Pearl Street parking lot is about a half mile away?

A Yes.

Q And what is the Arena?

A The Arena is where they park, people park in there, higher people.

Q Executives?

A Yes.

Q Now when you park your car over at the Pearl Street side of the parking lot, when you did that morning, do you recall whether or not you locked it?

A No, I didn't lock it.

Q Did you leave your keys in it?

A No.

Q You did not?

A No.

Q Now later on in that same morning of August 30 were you contacted by any representative of the FBI or police?

A Yes.

Q And do you recall the approximate time you were contacted?

A It was around 11:00.

Q What if anything did you do after you were contacted

by the representative of the police or FBI?

A Went to see if my car was there.

Q You went to the Pearl Street side of the parking lot?

A Yes.

Q Was your car there?

A No.

Q Did there come a time when you did find your car?

A Yes, after they notified me.

Q And did you go somewhere to get your car?

A Yes, I went to the Arena.

Q And about what time did you go to the Arena?

A Between one and three.

Q And was that on August 30?

A Yes, same day.

Q And was your car at the Arena?

A Yes.

Q And had you given anyone permission or authorization to use your car that morning?

A NO.

MR. LOWE: That's all Your Honor.

THE COURT: What kind of a car was it?

THE WITNESS: Chevrolet.

THE COURT: What color?

THE WITNESS: Blue.

THE COURT: What was its condition?

THE WITNESS: Fair, I guess.

THE COURT: What was the body condition?

THE WITNESS: It wasn't too bad, a few rust spots, it wasn't too bad though.

CROSS EXAMINATION BY MR. CLARY:

Q Just a couple of questions. You said in answer to the Judge's questions that it was a Chevrolet, what type of Chevrolet?

A Impala.

Q And what year?

A '65.

Q You are positive that it was a '65?

A Yes, a '65.

Q And is that the year of the car that is shown on the registration, '65?

A Yes.

Q Now from your testimony you didn't see your car again from quarter to seven or seven in the morning until sometime in the afternoon?

A Yes.

Q So you don't know where it was during that period of time?

A No.

Q Did you look through your car?

A After they found it, yes.

Q Did you find anything in there that had any -- for example, any money bag or any gauze or any disguise that might have regard to the bank robbery at the Seaway Plaza?

A No.

MR. CIARY: Thank you. That's all.

MR. LOWE: That's all, Your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. LOWE: The Government calls Robert SEMIONE.

ROBERT J. SEMIONE

called as a witness on behalf of the Government being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Mr. Semione, are you employed?

A Yes, sir, I am.

Q By whom?

A By the New York State Police.

Q And how long have you been with the New York State Police?

A 12 years.

Q Are you assigned at this time to any particular

office?

A Yes, sir.

Q And what is that?

A Watertown, New York.

Q And what is your position with the New York State Police at this time?

A I am an investigator in the Bureau of Criminal Investigation.

Q Did you participate in the investigation of the bank robbery at the Marine Midland Bank in Pamelia on August 30?

A Yes, sir.

Q And in connection with that investigation did you display photographs to any individuals?

A Yes, sir.

Q Did you display photographs to a Mrs. Jean Schultz?

A Yes, sir.

I will hand to you exhibits that have been received in evidence and marked one, seven, nine, ten, eleven and twelve and I will ask you if you can identify those exhibits?

A May I refer to notes that I took to refresh my recollection?

Q Would it refresh your recollection?

A Yes.

MR. LOWE: May he, Your Honor?

THE COURT: Sure.

THE WITNESS: Yes, sir, these are photographs I showed Mrs. Schultz.

BY MR. LOWE:

Q And when did you show those photographs to Mrs. Schultz?

A This was on August 30, '73.

Q And at what time of the day would that have been?

A This was in the evening.

Q And where were you when you showed them to her?

A At her residence at Theresa.

Q Did you contact her in advance before you went to her residence?

A No, sir, she does not have a phone.

Q Was anyone else present when you went to her residence and exhibited the photographs to her?

A Yes, I was accompanied by FBI Agent Phil Looney and I believe her daughter was present at the time.

Q Was Mr. Schultz her husband there at that time?

A No, he was working.

Q Now what did you say to her as to the purpose

of your visit?

A I stated to Mrs. Schultz that we had photographs of the subjects that were lookalikes of a composite drawing we had, and we would like to have her view them.

Q Did you then hand the photographs to her?

A Yes, sir, I did.

Q And what was the manner in which you handed them to her?

A I had these photographs in an envelope, I took them out of the envelope in a group and I handed them to her in a group.

Q Did she then look at them?

A Yes, sir, she did.

Q Was she able -- did she select any one of the photographs as being a photograph of the individual she had seen driving the getaway car?

A No, sir, she did not.

Q Is a photograph of Raymond Leo Cowles included among those photographs in your hand?

A No, sir.

Q THE COURT: I do take it it wasn't included among the ones you showed her?

THE WITNESS: That is correct, sir.

BY MR. LOWE:

Q Was there another occasion when you exhibited photographs to Mrs. Schultz?

A Yes, sir.

Q And I will now hand you exhibits that have been received in evidence and marked numbers one through eight and I will ask you if you can identify those.

A Yes, sir, these are the photographs I showed Mrs. Schultz.

Q On the second occasion?

A Yes, sir.

Q And when was that, what was the date?

A That was on September 9, 1973.

Q And where did you exhibit those photographs to her?

A At her residence, again R. D., Theresa.

Q And who else if anyone was present?

A I was accompanied by a partner, senior investigator Charles Donohue.

Q And was there anyone present -- anyone else?

A Yes, her husband was present and I believe her children were present at the time.

Q And on this occasion what did you say to her as the purpose of your visit?

A That we had another group of photographs of

looks likes of the composite drawings, we would like to have her view them.

Q And on that occasion what was the manner in which you handed the photographs to her?

A This was the same way, I had these in an envelope, I took them out of the envelope in a group.

THE COURT: How many were there in this group?

THE WITNESS: Eight, sir.

THE COURT: All right.

BY MR. LOWE:

Q And did she view those eight photographs?

A Yes, sir, she did.

Q And did she select anyone of those photographs as being a picture of the driver of the getaway car?

A She selected a picture of Dennis Purcell.

Q And did she hand you that photograph?

A Yes, sir, she did.

Q And what did she say at that time?

A She said this subject was the closest in resemblance to the driver of the getaway car, or words to that effect.

Q And did she make any second selections at that time?

A Yes, sir, she did.

Q And what did she say in regard to the second selection?

A She picked out the photograph of Raymond Cowles and said "This is possibly the subject."

Q Now --

THE COURT: This is from among the eight?

THE WITNESS: Yes, sir.

THE COURT: She picked one photograph who was not Cowles and said "This is the one that looks most like the man," or words to that effect?

THE WITNESS: Yes, sir.

THE COURT: She also picked Cowles' photograph and what did she say?

THE WITNESS: She said possibly this subject -- she took out, picked out two photographs, yes.

BY MR. LOWE:

Q Now did you make any notes of the conversation you had with Mrs. Schultz at that time?

A The only notes I have is what I have here in my hand, the numbers of the photographs and her selection.

Q And did you make those notes contemporaneously with the exhibiting of the photographs to

Mrs. Schultz?

A Yes, sir, I did.

MR. LOWE: Could we mark this as Government Exhibit next in order?

(Documents marked Government'sExhibit 17 for identification.)

Q Could you identify for us, Investigator Semione, Covernment's Exhibit 17 for identification.

A Yes, sir, these are the notes that I took on September 9, 1973 at the Schultz' residence.

Q And is everything on that sheet in your handwriting?

A Yes, sir, with the exception of this sticker.

Q With the exception of the exhibit marker.

A Yes, sir.

THE LOWE: The Government offers Exhibit 17 in evidence.

MR. CLARY: I don't have any objection, I think it is repetitive to what he has testified, I don't see the necessity for it, but I have no objection.

THE COURT: If you have no objection it is received.

(Government's Exhibit 17 marked for identification marked in evidence.)

BY MR. LOWE:

Q Did you at any time show photographs, Mr. Semione, to Mr. Donald Schultz?

A Yes, sir, I did.

Q When was that?

A This was also on September 9, 1973.

Q And did you show him the photographs after or before you had shown to Mrs. Schultz?

A After.

Q And what did you say to Mr. Schultz when you asked him to look at the photographs?

A Mr. Schultz requested to look at the photographs, and I said -- just handed them to him in a group again and asked him if he could pick out somebody that was his suspect driver of the getaway car.

THE COURT: Mr. Semione, can you keep your voice up a little?

BY MR. LOWE:

Q Why don't you repeat that last statement as to Mr. Schultz, asked him to look at the photographs?

A I said that Mr. Schultz requested to see the photographs, and that I handed him the photographs in a group and asked him if he could pick out someone that was the suspect driver of the getaway car.

THE COURT: This is the four group or the eight group?

THE WITNESS: This is the eight group, sir, this is the second one.

THE COURT: All right.

BY MR. LOWE:

Q Do you have those in front of you? Would you identify the numbers of the exhibits that you showed to Mr. Schultz?

A Yes, sir.

Q What numbers are they?

A These are exhibits one through eight.

Q And did Mr. Schultz make any selection from these photographs one through eight that were handed to him?

A Yes, sir, he did.

Q And which photographs did he select?

A He picked the photograph of Raymond Cowles.

Q What occured after that, after Mr. Schultz made his selection?

A That was the end of the interview, we left.

Q You then left?

A Yes, sir.

Q Did there come a time when you displayed any photographs to Mrs. Charlotte Palmer?

A Yes, sir.

Q When was that?

A Same date, September 9, 1973.

Q Where did that take place?

A At her residence in Watertown.

Q Did you contact her on the phone in advance or just go to her home?

A I think we called her on the phone prior, as I recall.

Q Well, in any event, what did you tell her? What was the purpose of your coming to her home?

A That we had photographs we would have -- we would like to have her view, subjects that were looka-likes of the composite drawing.

Q Was anyone with Mrs. Palmer when you showed her the photographs?

A My partner, Charles Donohue, Senior Investigator, was with me, and her husband Donald Palmer was present.

Q And can you describe for us the manner in which you exhibited the photographs to Mrs. Palmer?

A The photographs were in an envelope, I took them from the envelope, handed them to her in a group, and she viewed them in a group.

Q And whichphotographs are these which you are now

referring to?

A This is Exhibits one through eight.

Q And did Mrs. Palmer make a selection from Exhibit one through eight?

A Yes, she did.

Q Which photograph did she select?

A She picked the photograph of Raymond Cowles.

THE COURT: You say you told her they were lookalikes of a composite drawing, what composite drawing?

THE WITNESS: The day of the bank robbery Mrs. Schultz assisted a local artist in Watertown in preparing a composite drawing of the suspect who was driving the getaway car at the bank at the Seaway Plaza.

THE COURT: And was such a composite drawing made?

THE WITNESS: Yes, sir.

THE COURT: Was she the only one who talked with the artist?

THE WITNESS: To my knowledge I believe Senior Investigator Charles Donohue was there, and I don't know who else was there.

THE COURT: But I mean the only one who gave the artist a description of the driver of

the car.

THE WITNESS: To my knowledge, yes, sir.

THE COURT: And he made a composite drawing?

THE WITNESS: Yes, sir.

THE COURT: And on the basis of that you selected photographs from among photographs you had at State Police Headquarters that resembled the composite drawing?

THE WITNESS: Yes, sir, that's correct.

THE COURT: I see. All right.

BY MR. LOWE:

Q With regard to Mr. and Mrs. Schultz and Mrs. Palmer, after each one of those individuals made their selection, did you advise them as to the identity of the person they had selected?

A No, sir, I did not.

Q Was there any conversation in regard to who the person was they had selected?

A No, sir.

THE COURT: Is defendant's Exhibit A the composite drawing you are talking about?

THE WITNESS: That is a copy of the composite drawing, yes, sir.

THE COURT: That the artist made?

THE WITESS: Yes, sir.

THE COURT: Based on Mrs. Schultz' description before she saw any photographs of anybody?

THE WITNESS: That's correct.

BY MR. LOWE:

Q Investigator Semione, I am showing you Government's Exhibit 6 in evidence and I will ask you if you know when that photograph was taken?

A Yes, sir, I do.

Q What was the date?

A March 7, 1973.

Q Investigator Semione, did you show any photographs to Jeffrey Potter?

A No, sir, I didn't.

Q Did you show any photographs to a gentleman named George Eiss?

A No, sir.

Q Did you show photographs to anyone else in connection with this investigation?

A No, I didn't.

Q And why didn't you?

MR. CLARY: I will object to that, Your Honor.

THE COURT: Sustained, as to why he didn't.

BY MR. LOWE:

Q Investigator Semione, to your knowledge has any of the monies stolen from the Marine Midland Bank at Pamelia, New York on August 30, 1973 been recovered?

A No, sir, not to my knowledge.

MR. LOWE: That's all.

CROSS EXAMINATION BY MR. CLARY:

Q Now Mr. Semione, I call your attention to the September 9, 1973 date, is that the date you showed these photographs to Mrs. Schultz?

A That is one of the dates, sir.

Q And that is the date that she selected, I believe you have testified, two photographs?

A Yes, sir.

Q And the fact that she selected two photographs is borne out in your notes?

A Yes, sir.

Q And you are positive that that is how many she selected?

A Yes, sir.

Q Now I believe you stated to Mr. Lowe that you asked Mrs. Schultz if she could pick out a photograph of the driver of the getaway car, is that right?

A Yes, sir.

* * * * *

A No, I don't believe I ever met them before.

Q So you wouldn't know if you saw them or not?

A No.

MR. CLARY: Thank you. That's all.

MR. LOWE: Nothing further.

THE COURT: You are excused.

(Witness excused.)

MR. CLARY: Defense calls Wayne Prosser to the stand.

WAYNE C. PROSSER

called as a witness on behalf of the defendant being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. CLARY:

Q Wayne, how old are you?

A 16.

Q And where do you live?

A 942 Gotham Street.

Q Now I will stand back here, you try and project your voice so I can hear you, then I am sure everyone in the Court Room can. You live at 942 Gotham Street with anyone?

A Yes.

Q With whom?

A My mother, my three sisters and my grandmother.

Q And you told us you were 16?

A Yes.

Q And are you a student?

A Yes.

Q Where do you go to a school?

A Case Junior High School.

Q And that is located where?

A Washington Street.

Q In the city of Watertown?

A Yes.

Q And what grade are you in there?

A Ninth.

Q And on August 30, 1973 were you working at the jail in Watertown?

A Yes.

Q Sheriff's Office?

A Yes.

Q In what capacity were you working?

A Just outside work, washing cars, mowing lawns, watering the lawn.

Q And had you been working there for some time this summer?

A Yes.

Q And do you recall the day August 30, 1973?

A Yes, I do.

Q What time did you get to work that morning?

A 8:00.

Q And what kind of duties did you do while you were there?

A Washed a couple of cars.

Q And did you meet anyone else at the Sheriff's Office that morning?

A Yes.

Q And who was that?

A John Johnson.

Q And do you have any idea what time you met John Johnson?

A At 10:30.

Q In the morning?

A Yes.

Q And where did he meet you?

A In the garage at the Sheriff's Office.

Q And what were you doing at that time?

A Washing in -- washing a car.

Q And what if anything -- is there any reason why you noticed what time it was?

A Yes, because I told John to meet me there at 12:00 that afternoon and he was early, so I looked at the clock.

Q Where was the clock located?

A Hanging in the garage.

Q And do you recall what time the clock registered?

A Yes, 10:30.

Q And what did you do after you and John --

A (Interrupting) John helped me and -- he helped me wash the car I had started to wash, and then we left.

Q Had you made arrangements to meet that day the day before?

A Yes, the night before I told him to pick me up there.

Q And was it your intention to go?

A Just to pick up my check and then go downtown and buy some school clothes.

Q And what time did you leave the Sheriff's office?

a Fifteen to eleven.

Q A quarter to eleven?

A Yes.

Q Where did you go?

A We started down Court Street and we went into the Christian Shop.

Q Now the ladies and gentlemen of the Jury are not familiar with Court Street in Watertown, is that located near the Sheriff's Office?

A Yes, about 300 yards from the Sheriff's Office.

Q In fact does Court Street arrive at Massey Street at the intersection near the Sheriff's Office?

A Yes.

Q Did you walk across Massey Street?

A Yes.

Q Did John accompany you?

A Yes.

Q Now John Johnson, is he a friend of yours?

A Yes.

Q And was he in school with you?

A Yes.

Q Classmate?

A He is not my class.

Q In the same grade?

A Yes.

Q And you were friends, is that right?

A Yes.

Q Now you went down to this Christian Shop?

A Yes.

Q And do you have any judgment as to how long it took you to walk down there?

A About two or three minutes.

Q And what did you do about -- what did you do if anything at the Christian Shop?

A Well, we went in and we asked the lady in there how late they would be open that day, and then we looked at this one necklace that was in there.

Q And was the necklace inside or in the window, where was the necklace?

A It was in the window and we were looking at it in the case inside the store, too.

Q And was it your intention or John's intention to buy something at the Christian Shop?

A Yes, after I got my pay we were planning on going down and getting one.

Q Now what if anything happened after you were looking at this necklace?

A We went out of the store and we proceeded to look at the necklace again in the window of the store, and James Johnson and Raymond Cowles pulled up in white stationwagon.

Q Now do you know what the make of the stationwagon is?

A Yes, I believe it is a Chevy.

Q And who was driving?

A Raymond Cowles.

Q And it was a white stationwagon?

A Yes.

Q And James Johnson, did you know James Johnson before August 30?

A Yes.

Q And who was he?

A It was John Johnson's brother.

Q And did you know Raymond Cowles before August 30?

A No.

Q And were you introduced to Raymond that morning?

A Yes.

Q And what if anything -- strike that. Was there any conversation between you -- between either you and John Johnson and Raymond Cowles and James Johnson?

A No, just that James Johnson introduced me as we got into the car, me and John to Little Ray.

Q Is that how he introduced you to him?

A Yes.

Q And did James Johnson say anything to you or John about getting in the car, was there any conversation along those lines?

A No, they just pulled up and says -- they asked us to get in to go with them.

Q Asked you to go for a ride with them, did they?

A Yes.

Q You both got in the car, didn't you?

A Yes.

Q And now who was in the front seat of that car?

A James Johnson and Raymond Cowles.

Q And you told us Raymond was driving?

A Yes.

Q And did you and John get in the back seat?

A Yes.

Q And where did you go?

A We headed out over to the Court Street Bridge, then out Leray Street, I guess.

Q And where did you go from Leray Street?

A We headed out toward Ray's house.

Q Out toward Ray Cowles' house?

A Yes.

Q And do you know where Raymond Cowles lives?

A Out toward Theresa on Route -- I don't recall what route it is.

Q But near Theresa, New York?

A Yes.

Q And did anything occur on -- anything unusual occur while you were on Leray Street?

A Yes, a grey silver car passed us.

Q And what if anything did you notice about the car?

A That it had its siren on and its lights were flashing.

Q Did you see the car?

A Yes.

Q Did you recognize the car?

A Yes.

Q And where had you seen this car before?

A I had washed it before in the Sheriff's Office.

Q So did you recognize as being the Sheriff's car?

A Yes.

Q And it passed you on Leray Street?

A Yes.

Q And let me ask you this, Wayne, was the radio on in the car when you got in on Court Street?

A Yes.

Q And to your knowledge do you remember if Court Street is a one way Street or two way street?

A One way.

Q And would that one way be in the direction of the Court Street Bridge?

A Yes.

Q And this Christian Shop that you told us about, how far would you judge that to be from the Sheriff's Office?

A About 300 yards.

Q And now you say the radio was on to the best of your recollection?

A Yes.

Q Do you recall what station was on?

A Would you --

Q (Interrupting) How many radio stations are there in Watertown?

A Quite a few, I don't know how many.

Q Is there one that is fairly popular with younger people, WOTT?

A Yes.

Q And you recall that station being on that morning?

A Yes.

Q Now what if anything did you observe about this grey silver car after it passed you?

A Well, there was a discussion whether it was a Plymouth or a Dodge.

Q In the car?

A Yes.

Q That you were in?

A Yes.

Q And did you say anything about the car at that time?

A No, just that I had washed it before.

Q And did you see where the car went?

A No, not after it passed us we didn't.

Q Did you proceed out Leray Street then?

A Yes.

Q And out toward I believe you said you were headed Raymond Cowles' house?

A Yes.

Q And did there come a time when you heard anything on the radio of an unusual nature?

A Just as we headed out toward Ray's house, I don't know what route it is, but heading toward Ray's house there is a motel, and as you go around the bend by the motel the announcement come over the radio.

Q What announcement?

A That the Seaway Plaza Bank had just been robbed.

Q Was there any conversation concerning that in the car?

A No, just that we had passed it about five or ten minutes ago.

Q And was that the extent of the conversation concerning the bank?

A Yes.

Q Where did you go then?

A We went to Raymond's house.

Q And did anyone get out of the car at Raymond's house?

A Yes, Ray did.

Q And how long was he out of the car?

A About five minutes at the most.

Q Did he go in the house do you know?

A Yes.

Q Do you know what he did there?

A No.

Q And what if anything happened after that?

A Well, he got back in the car, we drove out toward Crystal Lake.

Q And where is Crystal Lake in reference to Ray's house?

A On the same road as we were heading.

Q Do you know where it is located?

A No.

Can you tell us any village it might be located Near?

A No.

Q And is it near the same road that Ray's house is on?

A Yes.

Q And what did you do when you got to Crystal Lake?

A Well, we drove in and apparently somebody wasn't there that was supposed to have been there, and we drove in and looked around, nobody was there, so we drove back out.

Q And did anyone get out of the car at Crystal Lake?

A No.

Q Do you recall where you went after that?

A Yes, we took some back roads heading toward Watertown, I guess.

Q And did you arrive at some destination?

A Yes. There was a dead woodpecker in the road and James Johnson had us get out of the car, me and John get out of the car and pick the woodpecker up, put it in a paper sack and then throw the paper sack away.

Q So the car was stopped?

A Yes.

Q And you recall this bird being there?

A Yes.

Q And now where did you go after that?

A We went to Linda Wood's house or trailer.

Q Where is that located?

A Near Glen Park.

Q And do you recall what if anything you did at

Linda Wood's house?

A Yes, me and John -- John got out some photo-albums and we were all looking at the photo album.

Q Did you do anything else there?

A Yes, a little boy came over from next door, it was the landlord's son, so he wanted us to look at his pony.

Q Pony?

A Yes.

Q Did you look at the pony?

A Yes.

Q Who was that?

A Me and John.

Q John, yourself?

A Yes.

Q All right. How long were you at Linda Wood's house, if you have any judgment?

A Until one o'clock, about one.

Q Do you have any judgment as to what length of time you were at her house?

A No.

Q And what if anything occured then?

A After we saw the pony we came back to the trailer and we proceeded to look at the photos again, and

then John put them away. Then James Johnson had me and John take and put the [illegible] in the back of the stationwagon that had been out in front of the trailer.

Q And did anyone come to the trailer other than the four of you?

A Yes, John's sister Carol, Mrs. Johnson and Linda Wood.

Q And by what means of transportation did they come to the trailer?

A In Carol's car, it was a blue -- I don't know what the make of the car was.

Q And did you then leave the trailer?

A Yes, Mrs. Johnson had both me and John get into the car and then we left.

Q Where did you go?

A To Mrs. Johnson's house.

Q That is located where?

A On Moffet Street.

Q Watertown?

A Yes.

Q And do you have any judgment as to about what time it was when you left the trailer?

A Yes, one o'clock, I believe.

Q And what if anything did you do after you arrived

at Mrs. Johnson's house?

A Me and John had a couple of sandwiches, then we proceeded to go downtown.

Q What did you do downtown?

A We went and picked up my check, then we went to some stores and bought some school clothes.

Q Now, Wayne, did you see any orange parka or any gauze or any gun or any money bags in this white stationwagon while you were riding in it?

A No.

Q Now you have testified in this matter before, haven't you?

A Yes.

Q And did you review the testimony that you gave at that earlier proceeding before coming here today?

A Yes.

MR. CLARY: Your witness.

CROSS EXAMINATION BY MR. LOWE:

Q Wayne, do you know an FBI Agent by the name of Frank Cole?

A Yes.

Q Do you remember meeting -- you attended with him and some other people at your school?

A Yes.

Q Do you recall who else was present at that meeting?

A The principal of the school, Mr. Hefferon.

Q Anyone else present?

A No.

Q Were there any representatives of the New York State Police there?

A Yes.

Q Do you recall who they were?

A No.

Q Was there just one or two?

A Two.

Q If I suggested the name of Investigator Mr. Demione, do you recall him being there?

A Yes.

Q Yes, you do?

A Yes.

Do you recall when this meeting took place?

A No.

Q Well, when did the school year start last fall?

A In September.

Q So it was sometime after August 30, then, this meeting was held?

A Yes, about two weeks.

Q About two weeks after August 30?

A Yes.

Q Somewhere in the middle of September?

A Yes.

Q And where did the meeting take place?

THE COURT: You can lead, you are on cross examination.

BY MR. LOWE:

Q Yes, sir. Where did the meeting take place?

A In the Principal's office.

Q Were you in school that day attending classes?

A Yes.

Q And then did someone contact you and tell you to come to the Principal's office?

A Yes.

Q Who was it that contacted you?

A I'm not sure, there's phones in the school that connects from the office to the schoolrooms.

Q And so there was an announcement or you were told to come to the Principal's office?

A Yes.

Q And when you arrived at the Principal's office were these gentlemen you have described, Mr. Cole, Mr. Hefferon and the two other people, were they there at that time?

A Yes.

Q And did somebody tell you what they wanted to talk to you about?

A Yes.

Q And what did they want to talk to you about?

A About the bank robbery that occured the 30th of August.

Q And to the best of your recollection, Wayne, what did you say to them about that bank robbery?

A Just I was with Ray Cowles at the time, and that was it.

Q That was all you said, you were with Ray Cowles?

A Well, they asked me other questions which I can't recall at this time.

Q You can't recall. Well, you did tell them, though, that you were with Ray Cowles on August 30?

A Yes.

Q And did they ask you what time of the day you were with him?

A I believe so, yes.

Q And what time did you tell them?

A I am not sure.

Q You don't remember now what you told them at that meeting?

A No.

Q Well, you have testified here this morning

that you met Ray a little after 10:45 outside the Christian Shop, is that correct?

A Yes.

Q Did you tell Mr. Hefferon, Mr. Cole and the other two men that?

A No.

Q What did you tell them in that respect?

A Well, they called me down to the office, I was -- when they said the FBI was here, I was quite nervous and I couldn't recall the times, so I gave them wrong times at that time.

Q So now you remember. What time did you give to them, what time did you tell them?

A I am not sure, but I think it was 12:00.

Q So it is your testimony now that at that meeting in the middle of September you told Mr. Hefferon, Mr. Cole and the other two men that you met Ray Cowles at around 12:00 on the morning of August 30?

A Yes, I believe so.

Q And it is your testimony that you were mixed up on the times because you were nervous?

A Yes.

Q When did you realize, Wayne, that you were wrong when you told them it was 12:00 that you

met Ray?

A Well, after I had gotten home and wasn't as nervous as I was when I was in school.

Q That same day?

A Yes.

Q That very same day you realized that you told them the wrong time?

A Yes.

Q And once you realized that, did you do anything?

A No.

Q Did you call up your Principal, Mr. Hefferon, and explain to him that you had been wrong?

A No.

Q Did you call up Mr. Cole of the FBI and tell him you were wrong?

A I don't think so, not me anyways, maybe my mother did, I am not sure.

Q You told your mother that you had given incorrect information?

A Yes.

Q At the time of the evening in the middle of the month, Wayne, did you know that Wayne -- excuse me, did you know that Ray had been accused of commiting the bank robbery?

A At that same day?

Q Yes, did you know it on that day?

A No.

Q It is your testimony, Wayne, that later on the same day of the meeting you remembered that you had given Mr. Hefferon and Mr. Cole incorrect information as to the time?

A Yes.

Q Do you remember me at an earlier proceeding in this case asking you questions about this meeting that we are now talking about?

A Yes.

Q And do you remember what you told me when I asked you about the hour, the time that you had given to Mr. Hefferon and Mr. Cole?

A No.

Q You don't remember those questions?

A I remember the questions, but I don't remember the times that I gave you.

Q You don't?

A No.

Q Page 464, line 13. Wayne, I am going to read these questions: "Q - I see. What time did you tell them that John Johnson arrived at the Sheriff's Office to meet you? A - I am not sure. Q - And you don't recall now --"

I am sorry, next page, line 11, do you recall me asking you that question and you giving that answer at the last proceeding, Wayne?

A I am not sure.

Q You don't recall? And on page 465, line 11, "Q - And you don't recall now what you told Mr. Cole and Mr. Hefferon and the other two officers at the time that John Johnson met you that day? A - Yes." Do you recall that question and answer?

A No.

Q So it is your testimony now, Wayne, that you told Mr. Hefferon and Mr. Cole and the others on that day that you met Ray at about 12:00?

A Yes.

Q And that was around the middle of September that this meeting took place?

A Yes.

Q Just about two weeks after August 30? Is that correct?

A Yes.

Q And do you recall when you testified at an earlier proceeding in this case at Albany, was that around the end of November of 1973?

A Yes.

Q Do you recall what else you told Mr. Hefferon and Mr. Cole at that meeting?

A No.

Q Did you tell them about looking at the clock at the Sheriff's Office garage when John Johnson arrived?

A I am not sure.

Q You are not sure?

A No.

Q Did you tell them about washing the car at about 10:30 and about John Johnson helping you?

A Yes, I believe so.

Q You believe you did tell them that?

A Yes.

Q Did you tell them about being to the Christian Shop?

A I am not sure.

Q You just don't have any recollection as to whether you told them or not?

A No.

Q Did they want to know where you were that day and what you were doing that morning?

A Yes.

Q They wanted to know those things?

A Yes.

Q Did you tell them about a grey automobile passing you with a siren going and lights on?

A Yes.

Q You did tell them about that?

A I believe so, yes.

Q Did you tell them about going to Ray Cowles' house?

A I'm not sure.

Q You are not sure whether you told them that. Did you tell them you spent five minutes at Ray Cowles' house?

A I'm not sure.

Q Did you tell them you went to Crystal Lake with Ray Cowles?

A I'm not sure.

Q Did you tell them about finding the dead bird -- woodpecker on one of the back roads?

A I'm not sure.

Q Did you tell them about going to Linda Wood's trailer?

A I'm not sure.

Q I'm sorry?

A I'm not sure.

Q Well, do you remember what you did tell them, anything that you did tell them in that meeting

about what you did with Ray that day?

A It's so long ago that I can't recall.

(Document marked Government's Exhibit 18 for identification.)

Q John, I will show you Government's Exhibit -- Wayne, I am sorry, I will show you Government's Exhibit 18 for identification, I shall ask you to read it to yourself and then you tell me after you finish reading it.

A I'm through.

Q Does that refresh your recollection at all, Wayne, with regard to what you told the Junior High School Principal and the representatives of the FBI And the Police at that meeting?

A No.

Q Now did you know Stretch Johnson before August 30?

A Yes.

Q How did you know him?

A John Johnson is his brother.

Q Did you see a lot of Stretch?

A Not too much.

Q How old is Stretch -- I am sorry, I don't know if I asked you this, is it correct that James Johnson has a nickname Stretch?

A Yes.

Q Many people call him Stretch?

A Yes.

Q How old is Stretch, do you know?

A I believe 22, 23.

Q And when Stretch and Ray saw you outside the Christian Shop, Stretch simply said to get in, do you recall what either he or Ray said to you at that time?

A We were just looking in the window and they says "Hi, get out of that window," and we turned around and they asked us into the car.

Q And when you got in the car was there any discussion about where you were going, what you were going to do?

A No.

Q Was there any discussion as to why you went to Ray's house?

A No.

Q You are just sitting in the car?

A Yes.

Q You had been working that day, is that correct?

A Yes.

Q Did you work five days a week at the Sheriff's Office?

A Four days a week.

Q And August 30 was what day, do you recall, of the week, was it a Thursday?

A Yes.

Q And that was a working day for you?

A Yes.

Q Were you planning on going back to work that day?

A No.

Q Now you said you had reviewed, Wayne, the transcript of what you said, what you testified to at the last proceeding, is that right?

A Yes.

Q And who gave you the transcript, how did you get it?

A The one I just read there?

Q No, I mean something like this that contains the questions and answers that were asked of you last time.

A Mr. Clary.

Q Mr. Clary gave it to you?

A Yes.

Q Did you go over that transcript with Mr. Clary?

A No, I wasn't home at the time he brought it to my house.

Q Have you talked to -- when was the last time you saw Stretch Johnson?

A Last week sometime.

Q Last week sometime?

A Yes.

Q Where?

A At Cheryl Johnson's house.

Q Who is Cheryl Johnson?

A Stretch's sister.

Q And did you talk to Stretch at that time about coming into Court in Utica and testifying?

A No.

Q And do you remember when before that was the last time you had seen Stretch?

A Yes.

Q When was that?

A At his house.

Q When?

A The night before the trial in Albany.

Q You met with Stretch the night before the last trial that took place in Albany?

MR. CLARY: I object to that question.

THE COURT: Overruled.

BY MR. LOWE:

Q Is that correct, you met with Stretch last --

you met with Stretch that night?

A Yes.

Q And who else was there at that meeting?

A Dicky Boyd and Linda Greco.

Q How about John Johnson?

A Yes, John was there.

Q What did Stretch say to you?

A He said "So you think you left work at 10:30 that morning."

Q Stretch said to you "So you think you left work at 10:30?"

A Yes.

Q What had he said to you before that? Did he just say that? What kind of a discussion had you had before that, what had you been talking about?

A There was none.

Q There wasn't any discussion at all?

A No.

Q He just came up to you and said that?

A Yes.

Q Was John Johnson present when Stretch said that to you?

A Yes.

Q Was there any further discussion that night

about your coming into Court the next day and testifying?

A No.

Q Prior to that night when had you last seen Stretch?

A I'm not sure.

Q You know a man named Plummer?

A Yes.

Q Who is Mr. Plummer?

A The Investigating Detective for Mr. Clary.

Q Did you ever tak to Mr. Plummer?

A Yes.

Q And do you recall when that was?

A No.

Q Well, Wayne, was it before the last time you testified in Albany?

A Yes.

Q And it was about two weeks before that?

A About that, yes.

Q And did somebody contact you and tell you that Mr. Plummer wanted to talk to you?

A No, just that he called my mother before to have permission to talk to me.

Q Mr. Plummer contacted your mother directly?

A Yes.

Q And was anyone else present when you talked to Mr. Plummer?

A Yes, John Johnson.

Q And what did you talk to Mr. Plummer about?

A Just if I recalled the 30th of August, and about the trial in Albany, about what to say -- not to say lies, just to tell the truth.

Q Did you tell Mr. Plummer that you met Ray at 10:30 or at around 12:00?

A I believe 10:30.

Q Are you sure?

A Yes.

Q Did Mr. Plummer review with you the roads you travelled and the approximate distances involved?

A No, I don't believe so.

Q He didn't. Did he make any estimates for you or with you as to the amount of time it would take to get from Watertown to Crystal Lake or anything like that?

A No.

Q He did not?

A No.

Q Since the night before the last trial the last time you testified, Wayne, have you since that time talked to Stretch about coming into Court

and testifying?

A No.

Q Have you talked to John Johnson about coming into Court and testifying?

A Yes.

Q And what have you talked to John about?

A Just about going over our testimony of last time.

Q Did you go over it together with him?

A Yes.

Q You read it together?

A I didn't read mine with him but I read his to him.

Q You read his testimony?

A Yes.

Q And did he read yours?

A No.

Q I can't recall what your answer was, Wayne, I asked you whether at the time of the meeting at the Principal's Office whether you knew at that time that Ray had been accused of robbing the bank, I don't know what you answered, did you know at that time?

A No.

Q Well, did there come a time when you did know that

Ray was accused of robbing the bank?

A Yes.

Q And do you remember when that was you learned that?

A A couple of days after we had met in the Principal's Office.

Q Couple of days after you met at the Principal's Office you knew Ray had been charged with this crime?

A Yes.

Q And at that time you also knew that you had been wrong in telling Mr. Hefferon and the FBI Agents that you met Ray at 12:00, is that right?

A Yes.

Q So, Wayne, within a couple of days of that meeting you knew that Ray couldn't have commited this bank robbery, right?

A Yes -- well, no I didn't.

Q But you knew that within a couple of days of that meeting you were with him around a quarter to 11:00.

A Yes, but I didn't know what time the bank had been robbed.

Q I see. You knew, though, that the FBI Agents, Agent Cole and the other people at that meeting

were interested in Ray's activities on the morning of August 30, that is the questions they were asking you, right?

A Yes.

Q And you knew that the reason they were interested in his activities on that day was because of the bank robbery, is that correct?

A Yes, I believe so.

Q Well, within a couple of days of the meeting once you knew that Ray had been charged with a crime, did you at that time contact Mr. Hefferon or Agent Cole?

A No.

Q You didn't contact anyone?

A No, I don't believe so.

Q Didn't you think that the information that you had might be of some help?

A Well, I didn't recall the day that the bank had been robbed, I didn't know whether I was with him the 30th or what. I recall being with him, but that certain day.

Q So within a couple of days of that meeting, the meeting took place around the middle of September, within a couple of days of that you weren't sure whether you were with Ray on August 30, is that

correct?

A Yes.

Q But today you are sure?

A Well, I have been sure because that night that the bank had been robbed I said to my mother that I was with him today, but I didn't know whether he did it before that time or when.

Q The night the bank was robbed you said to your mother "I was with him today"?

A Yes.

Q Well, the bank was robbed on August 30, is that correct?

A Yes.

Q And that night you said to your mother -- what did you mean by "him," Ray?

A Yes, because there was a picture that came over the TV that looked somewhat like him, and I says "That looks like Stretch Johnson's friend."

Q And you said "I was with him today?"

A Yes, that I was with Stretch and his friend and John.

Q And so you told your mother about that, and then what did you do, did you report it to the FBI?

A No.

Q Well at that time, the night of August 30, when

you saw that drawing or composite, did you think that perhaps Ray had robbed the bank?

A No.

MR. CLARY: I object to that, Your Honor, that is improper.

THE COURT: Yes.

BY MR. LOWE:

Q You testified, Wayne, that you didn't know what time the bank robbery had been commited?

A That's right.

Q And did there come a time when you did learn what time the bank robbery had been commited?

A No, I still don't know.

Q Well, you testified for us that as you were driving along the street you heard over station WOTT that the bank had just been robbed?

A Yes.

Q And you testified for us that a car that you knew was a police car was going with the siren and red blinkers and all flashing passed you?

A Yes.

Q But you didn't know what time the bank was robbed?

A No.

Q Didn't you testify you heard on the radio the bank had just been robbed?

MR. CLARY: I am going to object, I think this is argumentative.

THE COURT: Yes, I think he answered the question. I do think you are getting repetitive.

We will take a short recess.

(Thereupon a short recess was taken after which the hearing was resumed.)

(Document marked Government's Exhibit 19 for identification.)

BY MR. LOWE:

Q Wayne, I will show you Government's Exhibit 19 marked for identification and ask you if you can tell us what that is?

A It is my time chart.

Q It is your time chart?

A Yes.

Q For your employment at the Sheriff's Office?

A Yes.

Q And does your signature appear on that document?

A Yes.

MR. LOWE: I will offer it in evidence.

MR. CLARY: No objection.

THE COURT: Received.

(Government's Exhibit 19 for identification marked in evidence.)

BY MR. LOWE:

Q Wayne, I will again hand Exhibit 19 to you, how many hours did you work on August 30?

THE COURT: Does the Exhibit show?

MR. LOWE: It does not show how many hours he worked, Your Honor.

BY MR. LOWE:

Q How many hours did you work on August 30?

A From eight o'clock until fifteen eleven.

Q Two hours and 45 minutes approximately?

A Yes.

Q And I will read briefly from Exhibit 19 in evidence, it is for the week of August 26, 1973, the pay period ending September 1. On the block marked "Thursday" there is an entry of eight hours.

Just a couple of more questions, Wayne. Did you tell Mr. Hefferon, Mr. Cole at the meeting in Mr. Hefferon's office about a -- going to the Hitching Post on the morning of August 30?

A Yes.

Q And what did you say to them about going to the -- what is the Hitching Post?

A It is a bar.

Q It is a bar?

A Yes.

Q Where?

A In Watertown.

Q What did you tell Mr. Hefferon, Mr. Cole and the other people about going to the Hitching Post?

A That John and myself went into the bar looking for one of John's brothers, Stretch's friends, but I recalled after that that it was the wrong day.

Q So you told them that you had gone into the Hitching Post on August 30, but you were wrong on that?

A Yes.

Q Did you ever tell them, Mr. Hefferon and Mr. Cole and the others that you were wrong about that?

A No.

Q You testified that after you left Linda Woods' trailer you returned to Mrs. Johnson's house?

A Yes.

Q About what time did you get to Mrs. Johnson's house?

A I am not sure.

Q What time did you leave Linda Woods' trailer?

A About one o;clock.

Q You don't recall when you got to Mrs. Johnson's house?

A No.

Q And you had some sandwiches at Mrs. Johnson's house?

A Yes.

Q And then you went downtown?

A Yes.

Q How did you travel going downtown?

A I believe we walked.

Q "re you sure?

A Yes.

Q And how did you get their?

A Walked down Franklin Street, I believe.

Q You think you walked down Franklin Street?

A Yes.

Q Travel on any other streets?

MR. CLARY: Your Honor, I object to this, I don't see any relevance in this.

THE COURT: Sustained.

BY MR. LOWE:

Q When you got downtown what did you do?

A Well, it was about three o'clock, we went and got my pay because that's when you have to pick

it up is at 3:00, and then we went downtown, bought some school clothes.

Q What did you do between the time you left Mrs. Johnson's house and 3:00?

A Well, we were up to her house until about 2:30, then we left.

Q And what stores did you go to?

A Penney's, because there was a coat that I wanted there.

Q What time were you at Penney's?

MR. CLARY: I object again Your Honor, I think it is argumentative.

THE COURT: Not necessarily. Overruled.

BY MR. LOWE:

Q What time were you at Penney's?

A I am not sure.

Q Did -- Do you recall where you were at 10:30 on August 29, 1973?

MR. CLARY: Object, irrelevant.

THE COURT: Overruled.

THE WITNESS: No.

BY MR. LOWE:

Q Do you know where you were at a quarter of eleven on that day?

A No.

Q What about the day after August 30, do you know where you were at 10:30?

A On August 30?

Q The day after August 30, August 31.

A No, because there wasn't anything that happened unusual.

Q What was unusual that happened on August 30?

A The bank robbery.

Q Well, as of 10:30 or quarter of eleven or eleven o'clock on August 30 what did you know about the bank robbery?

MR. CLARY: I object to this -

THE COURT: Overruled.

THE WITNESS: What did I do?

THE COURT: What did you know about it?

BY MR. LOWE:

Q What did you know about it that may -- that made that a memorable day for you?

A The bank robbery, I told John to come pick me up at 12:00, he was early.

Q But you didn't know anything about the bank robbery, Wayne, until you heard about it on the radio, is that right?

A Yes.

Q And then you just kept on going about your affairs

that day, isn't that correct?

A Yes.

Q But just hearing that on the radio enabled you to remember just what you did on August 30?

MR. CLARY: I object.

THE COURT: Overruled.

THE WITNESS: Well, the bank robbery doesn't happen everyday.

BY MR. LOWE:

Q So this was an exciting event in your life, is that correct?

A Not exciting, it was just that we were heading out that way toward the Seaway, and that it seems funny a bank robbery just happened a while ago before then or something.

Q So August 30 is a memorable day for you because of the bank robbery, but you could not remember at the meeting in the Principal's Office what you had been doing that morning and the times you had been doing it, is that correct?

A Yes.

MR. CLARY: I object to that.

THE COURT: Sustained. It is argumentative.

MR. LOWE: That's all, Your Honor.

REDIRECT EXAMINATION BY MR. CLARY:

Q Very briefly, Mr.Prosser, Wayne, did you talk to Mr. Plummer sometime in November of 1973?

A I am not sure.

Q You did talk to him before you testified in Albany?

A Yes.

Q I believe you told Mr. Lowe a couple of weeks?

A Yes.

Q And did you tell Mr. Plummer what you told the ladies and gentlemen of the Jury in Court today?

A Yes.

Q And did you talk to me sometime after you talked to Mr. Plummer?

A Yes.

Q At your house?

A Yes.

Q Was your mother or anyone else present?

A Yes my mother was.

Q Did you tell me what you have told the ladies and gentlemen of the Jury and the Judge this afternoon?

A Yes.

Q And is that the truth?

A Yes.

Q Do -- to the best of your recollection?

A Yes.

MR. CLARY: That's all. Thank you.

MR. LOWE: Nothing further.

THE COURT: You are excused.

(Witness excused.)

THE COURT: All right, we will adjourn now until tomorrow morning at 10:30. Don't talk to anyone about the case, don't let anybody talk to you. Good night.

(Thereupon a recess was taken to February 8, 1974 at 10:30 a.m.)

* * * * *

MR. GOMULKA: No.

THE COURT: Don't talk to her about the case, be sure about that. We want to keep you pure as a Juror without any influencing getting into it or anything that takes place in the Jury's absence. All right?

MR. GOMULKA: Yes sir.

THE COURT: All right.

(The following proceedings took place in the Court Room in the presence of the Jury.)

MR. CLARY: May it please the Court, I will call John Johnson.

JOHN JOHNSON

called as a witness on behalf of the Defendant being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. CLARY:

Q John, how old are you?

A 14.

Q And what is your birthday?

A April 5, '59.

Q And where do you live?

A 416 Moffit Street.

Q Where is that?

A Watertown, New York.

Q With whom do you live at 416 Moffit Street?

A My mother.

Q And anyone else?

A No.

Q And are you a student at the present time?

A Yes.

Q Where do you go to school?

A Case Junior High.

Q That is in Watertown, is it not?

A Yes.

Q And what grade are you in?

A Ninth.

Q And do you recall August 30, 1973?

A Yes.

Q And do you know Wayne Prosser?

A Yes.

Q Did you know Wayne on August 30, 1973?

A Yes.

Q And was he a friend of yours?

A Yes.

Q And did you go to school with him?

A Yes.

Q Now did you know Raymond Cowles on August 30, 1973?

A I just met him on August 30.

Q Did you know him before that?

A No.

Q Now do you recall where you were the morning of August 30?

A Yes, I was home, then I went down to the Jail.

Q All right. How did you get from home to the Jail?

A Walked.

Q And by the Jail you mean what?

A Jefferson County Jail.

Q And --

A (Interrupting) Sheriff's Department.

Q Where is that located?

A Corner of Coffeen and South Massey.

Q And is it a fact, John, that the Jail and the Sheriff's offices and the Civil Office of the Jefferson County Sheriff's Department are all in the same location?

A Yes.

Q Is there a garage there?

A Yes.

Q And do you recall what time you went down to the Sheriff's Office or Jail that morning?

A I went down twenty after ten, I got there at 10:30.

Q What did you do when you got there?

A I helped Wayne finishing washing the car.

Q And where was the car?

A In the garage.

Q And did you go inside the Sheriff's Office at any time that morning?

A No.

Q Did you stay out in the garage area?

A Yes.

Q And what did you do after you finished washing this car?

A Went over to Court Street.

Q And how did you get from the garage area over to Court Street?

A Walked across the parking lot and jumped over the brick wall, walked across Massey Street and right down Court Street.

Q Now where is Court Street in relation to the jail or the Sheriff's Office?

A Well, the jail is right on Massey and Court Street, intersects with it.

Q Is it Court Street intersection at the corner where the jail is?

A Not directly, it is right here (indicating).

Q Is it fairly close to the jail?

A Yes.

Q Where Court Street insects Massey?

A Yes.

Q And did you walk down Court Street?

A Not all the way, we stopped at the Christian Shop.

Q And how long did it take you to get from the Jail or the garage area down to the Christian Shop?

A About a minute.

Q And how far would you say the Christian Shop was from the garage area?

A About 300 feet.

Q What did you do when you got there?

A We went in and asked how much a medallion was and how late they would be open.

Q When you say "we" was someone with you?

A Yes, Wayne Prosser.

Q Anyone else?

A No.

Q And you asked someone in the store about the price of some medallion?

A Yes, a lady.

Q And what did you do then?

A Then we went outside and looked in the wondow

at the medallion.

Q And what if anything happened at that point?

A Then James Johnson and Raymond Cowles came up and said -- said, Stretch yelled out the window and said "Hey, get out of that window."

Q Now James Johnson or Stretch, is he related to you?

A Yes, he is my brother.

Q And did he live with you at 416 Moffit Street in August of '73?

A No.

Q He lived somewhere else?

A Yes.

Q And what kind of a car were James Johnson and Raymond Cowles in?

A A white stationwagon.

Q Had you seen that car before?

A Yes.

Q Do you know who it belongs to or belonged to?

A Linda Woods.

Q Was Linda Woods a friend of either Raymond Cowles or James Johnson?

A Yes, girlfriend of Stretch's, James.

Q Girlfriend of your brother's?

A Yes.

Q How tall is Stretch, James Johnson?

A About six two, six three.

Q And was anyone else in the car with -- strike that. Was anyone else in the car besides Raymond Cowles and your brother?

A No.

Q And who was driving? Was it your brother?

A No, Ray Cowles.

Q And you --

A Little Ray.

Q You said Little Ray, is that how you were introduced to Raymond Cowles?

A Yes.

Q Were you introduced that day?

A Yes.

Q Are you sure you didn't know him before that?

A Positive.

Q Now you said your brother said something to you.

A Yes, said "Hey, get out of that window."

Q What if anything was said after that?

A He said "You want to go down to Crystal Lake, go swimming?"

Q And what did you say?

A I said "Yeah, we don't have our bathing suits."

Q Did you get in the car?

A Yes.

Q And did Wayne get in the car?

A Yes.

Q Where did you go?

A We went out Route 37 out to Little Ray's house.

Q Do you know where Crystal Lake is located?

A Just going out Leray Street, I don't where exactly it is located.

Q Is it some distance from Watertown?

A Yes.

Q And let me ask you this question, John, did you have the radio on in the car, was the radio playing when you got in the car?

A Yes, it was already playing when we got in the car.

Q And then you took what route if you recall?

A 37.

Q How did you get to Route 37?

A Out South Massey and get onto Leray Street.

Q Did you go over some bridge?

A Court Street Bridge.

Q And then did you go out Leray Street?

A Yes.

Q And did anything unusual occur on Leray Street?

A Yes, a grey unidentified Sheriff's car went by

us with the siren on.

Q What do you mean by unidentified?

A Didn't have anything on top.

Q Did it have any markings on it?

A No.

Q And did you know it was a Sheriff's car?

A Yes.

Q How did you know that?

A Because I just got done washing it.

Q And do you know what kind of a car it was?

A I think it was a plymouth.

Q And did you notice anything about it?

A It had the siren on.

Q Anything else?

A No.

Q And what did you observe if anything about the car?

A We just got done washing it.

Q And where it -- where was it on Leray Street?

A Just before you got to Seaway.

Q And did the car, did it proceed behind you or did it --

A (Interrupting) It passed us, went right past us.

Q And did you observe where it went after it passed

you?

A No.

Q You say then you went someplace?

A Went to Ray's house.

Q Where was Ray's house?

A I don't know, just out 37, it is towards Theresa, I think.

Q Had you been there before?

A No.

Q And did you go in the house?

A No.

Q Did anyone go in the house?

A Yes, just Little Ray.

Q Do you know what he went in for from your own knowledge?

A To get his boots, I think.

Q Now where did you go after that?

A Then we went out to Crystal Lake.

Q Now between the time that you went over the Court Street Bridge and the time you got to Ray's house, did you hear any -- were you listening to the radio?

A Yes.

Q Did you hear anything unusual on the radio?

A Yes.

Q Did you -- what did you hear?

A We heard that the Seaway National Bank was robbed.

Q Seaway National Bank?

A Or the Marine Midland or whatever it is.

Q And do you recall where you were at all when you heard that?

A Yes, we just passed the bank about five minutes, then we heard it.

Q And was this before you got to the house in Theresa?

A Yes.

Q Now you went to Crystal Lake?

A Yes.

Q And what did you do there?

A We drove in and looked around and drove back out.

Q And did you go swimming at Crystal Lake?

A No.

Q And did anyone get out of the car?

A No.

Q Where did you go then?

A Then we went to Linda Woods' trailer in Glen Park.

Q And is that some distance from Crystal Lake?

A Yes.

Q Had you been to Linda Woods' trailer before?

A Yes.

Q And you knew Linda Woods?

A Yes.

Q And was Linda there when you got there?

A No, she wasn't.

Q Who was there?

A Nobody.

Q And did the four of you go inside the trailer?

A Yes.

Q And was Linda to your knowledge, was she at that dating Stretch?

A Yes.

Q And what did you do if you recall at the trailer?

A We looked at some pictures and took the garbage out for Stretch, and the landlord kept complaining about Linda leaving it out -- leaving the outside light on, so we took the light out and then --

Q (Interrupting) Well, let me ask you this, did anyone come over to the trailer during this period of time?

A Yes, the landlord.

Q Did he say something about a light?

A Yes, he said Linda left the light on all night and it was plugged into his house, so I guess he got mad.

Q And did you do some work on that?

A I just took the light bulb out.

Q Were you there for some period of time?

A Yes.

Q Where did you go after that?

A My mother came out to the trailer after me and bought me home.

Q Your mother? Anyone else with her?

A Yes, my sister, Linda Woods and her babies, two babies.

Q Linda's two babies?

A Yes.

Q What was your sister's name?

A Carol.

Q Whose car was it that came out?

A Carol's.

Q And did you and Wayne leave it -- did you and Wayne leave at that time?

A Yes.

Q And where did Raymond and Stretch go?

A They stayed at the trailer.

Q They didn't go with you?

A They stayed at the trailer.

Q They didn't go with you?

A No.

Q Where did you go?

A We went home and ate lunch.

Q Home in Watertown?

A Yes.

Q On Moffit Street?

A Yes.

Q And did you do anything after that?

A Yes, we went downtown and went to a couple of stores, and then at 3:00 we went over and picked up Wayne's check.

Q Now do you recall what time you left the trailer?

A Between twelve and one.

Q And do you have any judgment as to what time you were in the Christian Shop?

A About quarter to eleven.

Q And do you have any reason or have any way of telling what time it was at that moment?

A Yes, because when we were at the garage, when we left we looked at the clock to see what time it was.

Q Why did you do that?

A Because we seen how much more time we had before

3:00 so we could pick up his check.

Q Then you went down Court Street at that point?

A Yes.

Q Now how did you get from your home on Moffit Street downtown in the afternoon?

A Walked.

Q And then you say you went over with Wayne to pick his check up?

A Yes.

MR. CLARY: That's all I have.

CROSS EXAMINATION BY MR. LOWE:

Q John, what time was it that you arrived at the Sheriff's Office?

A 10:30.

Q Arrived at 10:30, was it that time that you looked at the clock?

A Yes.

Q And where is the clock located?

A On the wall in the garage.

Q And why was it you looked at the clock at that time?

A Because I wanted to see what time it was, because we had to -- Wayne told me to meet him at 11:00, I got there a little early, I wanted to see how much time there was before 3:00.

Q What happened at 3:00?

A We went up to pick up Wayne's check.

Q And do you recall what time you left your house that morning?

A About twenty after ten.

Q Do you remember looking at the clock at your home before you left?

A Yes.

Q And then when you got down to the Sheriff's Office at 10:30 you looked at the clock again?

A Yes.

Q To see how much time you had before 3:00?

A Yes.

Q Do you remember what time you got up that morning?

A No, I don't.

Q Any idea?

A About nine.

Q Did you look at the clock when you got up?

A No.

Q What did you do between the time you got up and 10:20?

A I ate breakfast and got dressed and got washed and left.

Q Between 9:00 and 10:20?

A Yes.

Q Were you wearing a watch on August 30?

A No.

Q Was anyone at your home between 9:00 and 10:20 when you were there?

A My mother.

Q Anyone else?

A No.

Q Now what was Wayne doing at 10:30 when you arrived?

A Washing a car.

Q And did you testify that that was the same car that you observed later that day?

A Yes.

Q And did you help him wash the car?

A Yes.

Q How did you do that, how was that conducted, by hand or --

A (Interrupting) With a hose, and had to put the soap on and stuff and wash it.

Q And when you finished washing the car, what did you do?

A Just left, put the hose up and stuff and left.

Q I didn't hear you.

A We put the hose and sponge and water up and left.

Q And what time was that that you left?

A Quarter to eleven.

Q Did you look at the clock then?

A Yes.

Q And why was it you looked at the clock then?

A See how much more time we had.

Q Before 3:00?

A Before 3:00.

Q Is Wayne a close friend of yours, John?

A Yes.

Q August 30 school was not in session at that point, I assume?

A No.

Q Did you have a summer job?

A Yes.

Q Were you working that day?

A No.

Q That was your day off?

A No, I quit a couple of days before that.

Q Is Wayne your closest friend?

A Yes.

Q How often do you see Wayne?

A Every day.

Q During that period in the same summer time were you seeing him almost every day?

A Yes, I was seeing him every day.

Q And even now do you see him almost every day?

A I see him every day.

THE COURT: Do you eat lunch together usually?

THE WITNESS: Yes, in the school cafeteria.

THE COURT: During the summer?

THE WITNESS: No.

THE COURT: When you were seeing Wayne during the summer in August, did you eat lunch with him every day?

THE WITNESS: No, I -- because my job was too far away from him.

THE COURT: What time did you usually eat lunch?

THE WITNESS: About 12:00.

BY MR. LOWE:

Q Now I think you just said that at 10:35 you left the Sheriff's Office and you crossed the parking lot, climbed over a brick wall and went down Court street to the Christian Shop, is that correct?

A Yes.

Q And you testified that it is 300 feet from the Sheriff's Office to the Christian Shop?

A It's about 300 feet.

Q Might it be 300 yards?

A Yes, possibly.

Q Did you misspeak yourself?

MR. CLARY: I object to that.

BY MR. LOWE:

Q 300 feet?

MR. CLARY: I think that is argumentative.

BY MR. LOWE:

Q Do you remember what time when you arrived it was -- when you arrived at the Christian Shop?

A Yes, quarter to eleven, a little bit after that.

Q Did you look at a clock at the Christian Shop?

A NO.

Q Do you have any idea how long you stayed at the Christian Shop?

A About two minutes.

Q And then it was about ten minutes of eleven when you saw Stretch and Ray Cowles?

A Yes.

Q And what was it that Stretch said to you?

A "Hey, get out of that window."

Q And then did he mention something about swimming?

A Yes. Then we walked over to the car and asked him what he was doing. He said "Nothing. Do you want to go down to Crystal Lake swimming?" And we said Yes. So we got in the car.

Q You testified you didn't have your bathing suit with you?

A No.

Q Did Stretch have his bathing suit with him?

A Nobody did.

Q Did you say that to him, "You don't have a bathing suit with you"?

A Yes.

Q What did he say?

A He said "We'll go in our pants."

Q So about what time was it that you left the Christian Shop with Ray and Stretch?

A About ten to eleven.

Q Did you look at a clock at that point?

A No.

Q And I think you have testified that it was about five minutes past the Seaway when you heard a radio bulletin?

A Yes.

Q Is that when you say, five minutes past the Seaway? You mean the Seaway Shopping Plaza?

A Yes.

Q On any - - at any time on that trip did you drive directly by the Plaza?

A Like here's the Plaza and you have to take a

little -- like a turn (indicating).

Q Well, when you take that turn you just referred to, could you see the Plaza?

A Yes.

Q Could you see the Marine Midland Bank that was in the Plaza?

A Yes.

Q So it was five minutes beyond that when you heard a radio bulletin?

A Yes.

Q And do you recall what was said on the radio bulletin?

A Well, it said the bank was robbed.

Q The bank had just been robbed, did it say?

A Yes.

Q So that was five minutes beyond the Seaway? What time would that have been?

A I don't know.

Q Well, you testified you left the Christian Shop at ten minutes to eleven.

A It was about eleven.

Q About 11:00 o'clock?

A Yes, five after.

Q Was there any discussion between the four of you after you heard that news bulletin about

going back to the bank to see what was going on?

A No.

Q Was there any discussion at all about the news bulletin?

A No.

Q You just heard it come over the radio, no one said anything about it?

A No.

Q That's correct, no one said anything about it?

A No, no one said anything.

Q And then I think you said you went to Ray's house and -- in Theresa?

A Yes, I think it is in Theresa.

Q And you testified that Ray went to get some boots?

A Yes.

Q Did he tell you that is why he is going in there?

A Yes, that is what Stretch said, he had to go in and get his boots.

Q Did Stretch say why he had to get his boots?

A Because he didn't have his shoes on.

Q Didn't have anything at all on his feet?

A No.

Q What time was it that you were at Ray's house

in Theresa?

A I don't know.

Q It was sometime after 11:00?

A Yes.

Q And how long was Ray inside his house?

A About five, seven minutes.

Q Five or seven minutes?

A Yes.

Q And then you went out to Crystal Lake, you didn't go swimming?

A No.

Q And you said you drove around and looked around?

A Yes, we drove in and we looked around and didn't see anybody there so we just left.

Q Were you looking for someone?

A No, there wasn't no one there, like it was just bare, so we didn't want to swim.

Q Was there some discussion about whether or not you would go swimming?

A Yes, Stretch asked Little Ray if he wanted to go swimming, he said "I don't know," and we didn't really feel like swimming so we didn't, no.

Q What time was that that you were out at Crystal Lake?

A I don't know, about 11:30.

Q And do you recall if you testified to this or not, John, do you remember after you left Crystal Lake anything unusual occuring on any of the roads that you travelled?

A Yes, we took a lot of the back roads because I guess it was a short cut of something, and in the middle of the road was a bird, and the wind was blowing its wing, we thought it was still alive, so we stopped, and it was dead. So we put it in a paper bag and put it aside the road, that is what we did.

Q Do you recall how long it took you to do that?

A Not very long, about three minutes, four minutes.

Q And then you went to Linda Woods' trailer?

A Yes.

Q Do you recall what time that was you arrived there?

A No.

Q You didn't look at a clock there?

A No.

Q And who lives at that trailer?

A Linda Woods.

Q Alone?

A Yes -- Stretch lives with her.

Q At that time?

A Yes.

Q So that was Stretch's home at that time?

A Yes.

Q And you looked at the photographs?

A Yes.

Q And who was looking at the photographs?

A Me and Wayne and Little Ray and Stretch.

Q For how long did you look at the photographs?

A About fifteen, twenty minutes.

Q Do you remember what time it was then?

A No, I don't.

Q Could it have been 2:00?

A No, I don't think it was 2:00.

Q Well, do you have any idea what time it was?

A It was before 1:00, I don't -- I know that it was before 1:00.

Q So you spent fifteen or twenty minutes looking at the photographs, then what happened?

A Then we took the garbage out, and that landlord came over and started talking to Stretch, and then he told us about the lightbulb, so I took the lightbulb out and then my mother came out and got a grill, we put it in the car and we left and went home.

Q How about a pony, did you look at a pony that

day?

A No.

Q You don't remember that?

A Looked at a pony another day.

Q Another day?

A Little Jimmy --

Q (Interrupting) Who is Little Jimmy?

A Stretch's son.

Q Stretch's son?

A Yes.

Q Does LIttle Jimmy live at the trailer?

A No, they moved now.

Q But on August 30 did Little Jimmy live at the trailer?

A Yes.

Q In any event on August 30 you don't remember looking at a pony?

A No.

Q You testified the landlord came over and had some discussion about the lightbulb?

A Yes.

Q Did the landlord's child come over?

A No.

Q You are sure that it was or another day that you went to see the pony?

A Yes, I'm pretty sure it was on another day.

Q What time did your mother arrive?

A About a quarter after twelve, twelve thirty.

Q Did you look at the clock then?

A No.

Q Do you have any reason for saying quarter after twelve or twelve thirty?

A No, just because that's -- we got in Watertown at one.

Q I see, you got back to Watertown at one?

A Yes.

Q Did your mother know you were out there at the trailer?

A No.

Q What was your mother going out there for?

A To get a grill.

Q And she saw you and Wayne there?

A Yes.

Q And did you ask her if you could go back with her?

A Because she told me to go back with her.

Q And then you went back to Watertown and got there at one o'clock?

A Yes.

Q And you had some lunch?

A Yes.

Q At Mrs. Johnson's house, is that correct?

A Yes, at my house.

Q Right, at your house, and Wayne was with you?

A Yes.

Q Was anyone else there?

A My mother and Carol and Linda and two little kids.

Q Everyone came back from the trailer?

A Except for Stretch and Ray.

Q How long did you stay at your house after one?

A About half an hour while we ate.

Q So you left your house around one-thirty?

A Yes.

Q You then proceeded to walk downtown?

A Yes.

Q And what time was it that you went to cash Wayne's check?'

A It was a little after three, about fifteen after three.

Q What did you do after 1:30 when you got downtown?

A Went in the stores and priced some shoes and some clothes.

Q What stores did you go in?

A Attica Johnson and Penney's and Woolworth's and

Stabile.

Q And you remember the time that you were in any of those stores?

A No.

Q You can't tell us what time you were in one store as opposed to the others?

A I don't understand the question.

Q Well, do you remember when you were in Penney's, for example, the time you were in Penney's?

A No.

Q And I am sorry, was it Attica Johnson?

A Yes.

Q Do you remember the time you were in that store?

A No, but that was our last store, so it was pretty close to 3:00.

Q Were you looking at the clocks in these stores?

A No, we were just pricing some stuff so when we got the check we would already be downtown, because we only had to go to the County Building, we would turn around and go back to the stores and get what we were looking at.

Q So you weren't looking at the clock frequently that afternoon in the stores?

A No.

Q But at 10:30 and 10:45 you were looking at the

clocks because you wanted to know when it would be 3:00 so you could cash the check, is that right?

A Right.

Q I think you have indicated, John, you didn't see Stretch on the morning of August 30 before the Christian Shop, you didn't see him at your home?

A No.

Q Do you know where Stretch was living on August 30, at the trailer?

A Sometimes he was living at the trailer and sometimes he was living at East Main Street.

Q Do you know where Stretch is living now?

MR. CLARY: Your Honor, I am going to object, I really didn't go into this.

THE COURT: Sustained.

THE WITNESS: Want me to answer?

THE COURT: No.

BY MR. LOWE:

Q Prior to August 30, John, when you saw Stretch at the Christian Shop, do you recall when the last time before that was you had seen him?

A Yes, the night before.

Q Where did you see him the night before?

A I think it was the night before -- yes, it was the night before -- no, it wasn't. I can't remember the last time I seen him before that.

Q It might have been the night before?

A No, it wasn't the night before, I was thinking of the night before I came to Court.

Q Well, again let's go back to August 30, do you have any recollection, would it have been a month before that you saw him?

A No, I can't remember.

Q Did you see a lot of Stretch at that time?

A No, not really, because my mother didn't like me to be with him then, you know.

Q Your mother didn't like you to be with him?

A She --

MR. CLARY: I think I am going to object to this, I don't think this is relevant to the issue of this trial, issue of this --

MR. LOWE: All right, I won't pursue it, Your Honor.

BY MR. LOWE:

Q In any event you hadn't seen much of Stretch prior to August 30?

A Right.

Q Now you testified, John, that Stretch is about six feet two inches or six feet three inches?

A Yes.

(A photograph marked Government's Exhibit 20 for identification.)

Q I show you Government's Exhibit 20 for identification John, and I will ask you if that refreshes your recollection as to Stretch's height?

A He was about six foot.

Q Is he six foot or a little less?

A A little less, about five eleven.

Q Was Stretch employed at the date of August 30?

MR. CLARY: I object to this, Your Honor, again this is irrelevant.

THE COURT: Overruled.

THE WITNESS: Can I answer that?

THE COURT: Yes.

THE WITNESS: No, he wasn't employed.

BY MR. LOWE:

Q John, do you remember where you were at 10:30 on August 29?

A No.

Q Do you remember where you were quarter of eleven on that morning?

A No.

Q How about the day after August 30, August 31, do you remember where you were at 10:30 that morning?

A No.

Q Quarter of eleven?

A No.

Q Is there any particular reason why you remember everything that transpired on August 30?

A Because the bank was robbed that day.

THE COURT: How old is Stretch?

THE WITNESS: 22

BY MR. LOWE:

Q So you remember what happened on August 30 because that was the date the bank was robbed?

A Yes.

Q Page 534. John I will ask you if you remember being asked this question and giving this answer at an earlier proceeding in Albany: "Q - is there any particular reason, John, why you recall what happened onAugust 30? A - No." Do you remember being asked that questions and giving that answer?

A Yes.

Q Have you talked to anyone about coming in here

this morning and testifying, John?

A Yes.

Q Who have you talked to?

A Mr. --

Q Clary?

A Clary.

Q Have you talked to anyone else?

A My mother.

Q Anyone else?

A Wayne.

Q Did you read the transcript of what you said in Albany?

A Yes, I didn't read it all.

Q Did you read the transcript of what Wayne said?

A No.

Q Where were you when you read the transcript?

A I was home and then I read some of it on the way up here -- well, I didn't read it, Wayne read it to me.

Q Wayne read it to you?

A Yes, on the way up here.

Q And then did you talk about it?

A No, he just read it to me, like he asked me the questions and I told him the answers.

Q I see. Have you talked to Stretch about coming

in here this morning and testifying?

A Yes.

Q And what did you talk about with Stretch?

A He just said to get up there and tell the truth and don't be nervous, you ain't got nothing to worry about.

Q Do you remember testifying in Albany?

A Yes.

Q Do you have any idea how many times you have seen Stretch since then?

A Quite a few.

Q Quite a few times?

A I went to Pennsylvania with him.

Q You did?

A Yes.

Q Where did you go in Pennsylvania?

A To my sister's house.

Q Where is that?

A German, Pennsylvania.

Q And on these -- Stretch was with you in Pennsylvania?

A Yes.

Q And when you were in Pennsylvania with Stretch did you talk about testifying in Court?

A No.

Q How about these several other occasions you have talked to Stretch?

A No.

Q You haven't discussed --

A (Interrupting) Just that last time I seen him was a couple of nights ago, and I told him I had to go to Court yesterday, and he said -- he told me what I just told you.

Q That was a couple of nights ago?

A About three days ago.

Q And did he call you up and say he wanted to see you?

A No, I go over there to see Linda and the kids.

Q Now again directing your attention, John, to the last time you testified in Albany, and I think earlier this morning you made some reference to talking to Stretch the night before that, is that correct?

A Yes, I was up there, I was getting a radio.

Q O.K. Now we are talking about when you testified in Albany at the end of November.

A Yes.

Q And the night before that you were with Stretch?

A I was up to his house, I was getting a radio.

Q And was Stretch there?

A Yes.

Q Who else was there?

A Linda Greco and Dickie Boyd and Wayne.

Q Wayne was there?

A Yes.

Q Do you know why Wayne was there?

A Because he's always with me.

Q So you and he went there?

A Yes.

Q And did Stretch talk to you that night about testifying in Court the next day?

A No, he just said "How are you going to get down there," and how am I going to get back? He didn't say nothing about what to say or anything.

Q You remember him talking to Wayne about what Wayne would say the next day?

A No, I don't remember him talking to anyone.

Q You remember him saying words to the effect it was 10:30 when you met Wayne?

A No, I don't remember that.

Q You don't remember him saying anything like that. Were you with wayne and Stretch all the time you were there that night, were you all together?

A Like sometimes I would go out in the kitchen, or Stretch would go out in the kitchen and Wayne

would go out and get a glass of water, we always weren't in the same room.

Q Do you know a Mr. Plummer?

A Yes.

Q Who is he?

A He is Little Ray's private detective, I think.

Q Is Little Ray's private detective, who told you that?

A I think Mr. Clary.

Q And have you ever talked to Mr. Plummer?

A Yes.

Q And when was that?

A About three weeks before the last trial.

Q Three weeks before you testified in Albany you talked to Mr. Plummer?

A About that.

Q Where were you when you were -

A (Interrupting) My house and Wayne's house.

Q Who else was there?

A My house was me, my mother, Stretch and Mr. Plummer. Wayne's house, me, Mrs. Prosser and Mr. Plummer.

Q Did Mr. Plummer call you and contact you and tell you he wanted to talk to you?

A No, Stretch told me to stay around the house today because Mr. Plummer is going to come up to talk

to me.

Q Stretch told you that Mr. Plummer wanted to talk to you?

A Yes.

Q But Mr. Plummer is Little Ray's private detective?

A I think he is.

Q Did Stretch tell you why he knew that Mr. Plummer wanted to talk to you?

A Because Mr. Plummer was talking to Stretch, and he said he was going to have to talk to me and Wayne, too.

Q So first you met at your house with Stretch and Mr. Plummer, and what was said at that meeting?

A Mr. Plummer said that if they asked me something and I don't know, tell him I don't know, if I don't remember, just say you don't remember, and he asked me about times and everything and went down and picked up Wayne at school.

Q Was Stretch participating in this conversation?

A Yes.

Q What would Stretch say?

MR. CLARY: That is hearsay.

THE COURT: Yes.

BY MR. LOWE:

Q Before meeting with Mr. Plummer that day had you talked to Stretch about the events of August 30?

A Yes, he just told me that Mr. Plummer was coming up to talk to me about it.

Q Right, but had you talked to Stretch about what you did on August 30?

A No.

Q Now the meeting with Mr. Plummer was about three weeks before you testified in Albany?

A Yes.

Q And you testified in Albany around the end of November?

A Yes.

Q So this was sometime in the first week in November you talked to Mr. Plummer?

A Yes.

Q And the bank robbery occured on August 30, is that correct?

A Yes.

Q So you didn't talk to Stretch fro, August 30 until the first week in November?

MR. CLARY: Well, I object to that, I don't think that is what he said.

THE COURT: Overruled.

THE WITNESS: Do I answer that?

THE COURT: Yes.

THE WITNESS: No, I didn't talk to him only until Mr. Plummer came up.

BY MR. LOWE:

Q If it was unclear, John, you didn't talk to Stretch between the 30th of August and the first week in November about what happened on August 30?

A Right.

Q You didn't talk to him?

A Right.

Q It was never mentioned?

A No.

Q Now did there come a time, John, when you learned that Ray had been charged with robbing the bank?

A Yes, that day that Mr. Plummer came up.

Q Sometime in the first week in November you learned about it?

A Yes, Stretch told me that Mr. Plummer was coming up to talk to me about the bank robbery, and I didn't know what bank robbery he was talking about until he told me. I knew they arrested for something, but I didn't know what they arrested him for, I thought it was for guns or something.

Q How in other words before you met with Mr. Plummer you knew that Ray had been arrested for something, but you didn't know what it was for?

A Yes.

Q How did you learn that?

A Stretch told me that Little Ray was arrested or something.

Q I thought you didn't see Stretch between August 30 and your meeting with Mr. Plumer?

A You said that.

Q I am sorry.

A You said I didn't talk --

MR. CLARY: I object, I think that is argumentative and I don't think that is the testimony of this witness.

THE COURT: Sustained.

BY MR. LOWE:

Q Did you see Stretch between August 30 and the time you met with Mr. Plummer?

A Yes, but you asked me last time did I talk to him about the trial.

Q I am sorry. How many times did you meet with Stretch between August 30 and your meeting with Mr. Plummer?

A I don't know.

Q Twice?

A I don't know, a little more than twice, let's say.

Q In any event --

A (Interrupting) About four times.

Q Maybe four times. In any event, on one of those occasions Stretch told you that Ray had been arrested?

A Yes. I asked him where he was and he said he got arrested and then that was it.

Q But he didn't tell you what he had been arrested for.

A I didn't ask him.

Q And he didn't tell you?

A No.

Q And you didn't read any newspaper accounts of Ray's arrest?

A I don't read the newspaper.

Q You watch television?

A Yes.

Q You didn't hear anything about it on the television?

A No.

Q Is WOTT a popular radio station in the Watertown area for the young people?

A Yes.

Q You listen to that station?

A When I am in the house, I am not in the house very much in the summer.

Q You didn't hear anything on WOTI about Ray being arrested?

A No, I went swimming a lot up to the park.

Q Where?

A Up to the park.

Q Did Wayne ever tell you that Ray been -- had been arrested in connection with the Marine Midland Bank robbery?

A No.

Q He didn't?

A No.

Q Did Wayne ever tell you that he had a meeting -- do you know Mr. Hefferon?

A Yes.

Q Who is he?

A My Principal at school.

Q He is the Principal of your school, you go to the same school Wayne does?

A Yes.

Q Did Wayne ever tell you that he had a meeting in Mr. Hefferon's office and with an FBI Agent

and two State Policemen?

A Yes, that was the same day Mr. Plummer came up and talked to me, I think.

Q Well first let me ask you this, Wayne told you he had a meeting in the Principal's office?

A Yes, when I went down -- when me and Mr. Plummer went down to pick him up at the school he told me.

Q That is what he told you, he had a meeting in the Principal's office?

A Yes, he was in school that day and I got suspended, I was home, and Mr. Plummer came up and me and him went down and picked up Wayne at the school, then we brought him over to his house and we talked over there. Then he told Mr. Plummer, I guess, that the FBI talked to him or something.

Q Well, do you recall -- you have testified earlier you had a meeting with Mr. Plummer the first week in November, did you ever have a meeting with Mr. Plummer before that?

A No.

THE COURT: We will take a short recess.

(Thereupon a short recess was taken after which the hearing was resumed.)

BY MR. LOWE:

Q John, when we recessed I was asking you whether Wayne had told you about the meeting he had had with Principal Hefferon and An FBI Agent and some State Police, and I think you responded, correct me if I am wrong, that Wayne did tell you about that on the same day that you had a meeting with Mr. Plummer?

A Yes.

Q And you previously testified that you had a meeting with Mr. Plummer around the first week in November?

A Yes.

Q And is that the time that Wayne told you about the meeting he had had with Mr. Hefferon?

A Yes, because he didn't know if he was supposed to tell me or not.

Q I see. Did he tell you that he had a meeting with Mr. Hefferon on that day?

A I don't know, I can't remember if he told me it was that day or some other day.

Q If I suggest to you that Wayne's meeting with Mr. Hefferon was around the middle of September, would that refresh your recollection at all as to Wayne told you about the meeting?

A I don't understand.

MR. CLARY: I object, I don't understand the question either, Your Honor.

THE COURT: Refrain it.

BY MR. LOWE:

Q I am trying to pinpoint it, John, the precise time as closely as we can that Wayne told you about the meeting he had, with Mr. Hefferon, that

MR. CLARY: Your Honor, I suggest that has already been answered a couple of times.

THE COURT: Go on, frain your question.

BY MR. LOWE:

Q And in order to assist us in pinpointing that precise time, I am going to suggest to you that Wayne met with Mr. Hefferon around the middle of September, does that refresh your recollection as to when Wayne told you about the meeting, does it jog your memory, does it cause you to remember when he told you?

A No.

Q O.K. But you only had one meeting with Mr. Plummer?

A Yes.

Q You testified, John, that the automobile that passed you on the morning of August 30 had a siren going?

A Yes.

Q Do you know whether there were any lights flashing?

A I don't remember, I think it was one of those kind that you just stick up.

Q On top of the car, you mean?

A I am not sure whether it was flashing, I don't know, I can't remember.

Q You testified, John, that you went down to Pennsylvania with Stretch?

A Yes.

Q And did you travel in the white stationwagon?

A No, we travelled in a blue convertible, little tiny one, one of them little small cars.

MR. LOWE: That's all, Your Honor.

MR. CLARY: I have just a couple of questions, Your Honor.

REDIRECT EXAMINATION BY MR. CLARY:

Q When you talked to Mr. Plummer, John, did you not at that -- did you know at that time he was working as a Private Investigator?

A Yes.

Q And did you know he was working for me on Raymond's behalf?

A Yes.

Q He mentioned my name, did he?

A Yes.

Q Mentioned that he was working for Raymond Cowles?

A Yes.

Q And when you talked to him in November did you tell him what happened on August 30?

A Yes.

Q Did you tell him what you told the ladies and gentlemen of the Jury today?

A Yes.

MR. CLARY: Thank you. That's all I have.

MR. LOWE: Nothing further.

THE COURT: You are excused.

(Witness excused.)

MR. CLARY: If it please the Court, the defense calls George Eiss to the stand.

GEORGE EISS

called as a witness on the behalf of the defendant being first duly sworn and was examined and testified as follows:

DIRECT EXAMINATION BY MR. CLARY:

Q Mr. Eiss, where do you reside?

A Route 4, Watertown, New York.

Q And how old are you sir?

A 43.

Q And how long have you lived in the Watertown area?

A Most of my life.

Q And are you employed?

A Yes, sir, self employed.

Q And were you in the vicinity of the Marine Midland Bank at the Seaway Plaza on August 30, '73?

A Yes, sir.

Q And what time of the day were you there?

A About 10:30 in the morning.

Q And what was the purpose of your going to that area?

A To deposit a cash deposit.

Q And where were you going to make that deposit?

A At the Seaway Branch of the Marine Midland Bank.

Q And did you drive there?

A Yes, sir, I did.

Q In an automobile?

A Yes, sir.

Q And did you park your automobile in some location?

A Yes, sir, I drove directly to the bank, turned my wheels to to the right and backed in about

the second car down the line.

Q And in which direction were you facing?

A I think the direction is northwest.

Q Now your car was at some angle to the bank, was it?

A No, parallel.

Q Parallel with the bank?

A Yes.

Q When it was parked?

A Yes, sir.

Q Would it facing -- are you familiar with a laundromat?

A Yes, sir.

Q Would your car be facing toward the laundromat or away from the laundromat?

A The right side of the car would be toward the laundromat.

THE COURT: Now wait a minute, that's not much help, isn't the laundromat parallel, too?

THE WITNESS: Yes, sir.

THE COURT: Which direction, away from you or towards you?

THE WITNESS: It would have been to my right.

THE COURT: So would the bank?

THE WITNESS: Yes, sir.

THE COURT: In relation to the bank, which way was the laundromat?

THE WITNESS: Second store to the right of the door of the bank, it would be to the east.

THE COURT: To the east of the bank?

THE WITNESS: Yes, sir.

THE COURT: And then which direction was it from the front of your car?

THE WITNESS: It would be to the right rear.

BY MR. CLARY:

Q So your car was facing away from the laundromat?

a Yes sir.

Q Are there other stores on the other side of the bank as you face the bank proper?

A Yes, sir.

Q So perhaps we can clear up the laundromat, it would be at your right if you face the bank?

A Yes, sir.

Q And there are other stores down on the left?

A Yes, sir.

Q And your car was facing towards those other stores?

A Yes, sir.

Q Now what if anything did you observe in the parking lot?

A A 1966 or '65 Chevrolet to my right and to the south, or to my left and to the south sort of.

Q On your left side, the driver's side?

A Yes, sir.

Q And how far away was that? How far was that automobile away from you?

A Approximately 80 or so feet.

Q 80 feet?

A Approximately, yes.

Q And what if anything did you observe about that vehicle?

A A man was sitting in it.

Q And you say it was either a '65 or '66 Chevrolet?

A Yes, sir.

Q You are not sure which?

A No, they were nearly alike, there is hardly any way you can tell the difference.

THE COURT: What color was it?

THE WITNESS: Turquoise or blue.

BY MR.CLARY:

Q Did you testify earlier in this proceeding, Mr. Eiss?

A Yes, sir.

Q As a witness for the Government?

A Yes, sir.

Q And did you testify at that time that you were sure it was a 1966 Chevrolet?

A It could have been.

Q No, my question --

a (Interrupting) I must have.

Q Did you testify to that?

A Yes, I might have, sir.

Q Now you say you were about 80 feet from this automobile and you observed one man in the automobile?

A Yes.

Q And would you describe that individual for us?

A I think he had a mustache, a set of glasses, I think they were tinted, sideburns, and I think he had a hat.

Q And did you give us a description of this individual to anyone after the August 30 date, any police officers?

A Yes, sir, FBI Investigator and C. C. Donohue, Investigator for the State Police came to my yard.

Q And do you recall when that was?

A No, sir.

Q Was it a couple or three days after the occurance?

A I think so.

Q Within a week?

A I think so.

MR. CLARY: Do you a summary, Mr. Lowe, of any conversation that Mr. Eiss had?

MR. LOWE: He is a defense witness, Your Honor.

THE COURT: Do you have a summary?

MR. LOWE: Yes.

THE COURT: I am aware he is a defense witness.

MR. LOWE: Yes, sir, I do.

THE COURT: Produce it.

(Document marked Exhibit 3507 for identification.)

BY MR. CLARY:

Q Now you have told us, Mr. Eiss, that the individual you observed in this car was alone, you didn't see any other individual?

A That's correct.

Q And you say he had a mustache on?

A I believe so.

Q Are you sure of that?

A Not positive, sir.

Q And are you sure of whether or not he had a hat

on?

A I am not positive.

Q And what do you recall about the mustache?

A I think it was a medium sized mustache.

Q Was it a full mustache as opposed to a slight mustache?

A I wouldn't be able to distinguish that, sir.

Q Did you testify before in this proceeding that the individual had a slight mustache?

A I might have.

Q Now would you give us your best judgment as to the age of the individual you saw in the car?

A At that time I believed him to be middle aged.

Q And by middle aged you mean how old?

A About my age.

Q And you are 43, I think you told us?

A Yes.

Q And the view of this individual that you got was from about 80 feet away?

A Yes.

Q What did you do after that?

A Looked around some more and then proceeded into the bank.

Q And did you see any individual in an orange parka at any time that you were near the bank that morning?

A No, sir.

Q And did you see any individual in an orange parka at any time in this time that you told us about?

A No, sir.

Q And did you transact some business at the bank?

A Yes, sir.

Q And then I take it you left the bank?

A Yes, sir.

Q Where did you go?

A Directly to the intersection of Route 37 and 342 to a coffee shop.

Q And is it a fact Mr. Eiss that the view that you got of this individual was from 80 feet, about 80 feet?

A Yes, sir.

Q And did you get any view from any closer?

A I might have.

Q And do you recall the description that you gave to the FBI Agent some time after the date of this incident? The description of the man in the car, do you recall what you told them?

A Not exactly.

THE COURT: Do you know what day of the week it was, Mr. Eiss?

THE WITNESS: The 30th of August.

THE COURT: What day of the week?

THE WITNESS: I can't remember.

THE COURT: Would it help if I suggested a Thursday?

THE WITNESS: It is very possible.

THE COURT: What time did you get there?

THE WITNESS: At approximately 10:30.

THE COURT: Were there any other cars in the parking lot other than the one you described? Were there any other cars besides the turquoise car and yourself?

THE WITNESS: OH, yes.

THE COURT: How many?

THE WITNESS: It's a huge parking lot.

THE COURT: I would think so, but how many cars were there at 10:30 in the morning?

THE WITNESS: As near as possible, maybe 100 cars.

THE COURT: I see, and were they parked pretty close together?

THE WITNESS: No, sir, most of the cars would be at the lower end where more business is transacted.

THE COURT: Is that the opposite end from

the bank?

THE WITNESS: It would be the northwest end of the parking lot.

THE COURT: How many in the area of the bank, the vicinity of the bank?

THE WITNESS: Maybe five.

THE COURT: Five cars?

THE WITNESS: Yes, sir.

THE COURT: Can you tell me the colors of the other cars?

THE WITNESS: Yes, 1972 Fury III, medium green, belonging to Myrna Culley, a bank clerk, and an old '60 Chevy, about a '60 Chevy, I think that was on the same parking area, the same row as I was sitting in, toward the laundromat.

THE COURT: What color?

THE WITNESS: I can't remember.

THE COURT: Can you remember the color of any of the other cars?

THE WITNESS: Just that Plymouth.

THE COURT: Just that one?

THE WITNESS: Yes, sir.

THE COURT: Can you remember the makes of any of the other cars?

THE WITNESS: No, I don't believe so.

THE COURT: You are in the repair business, aren't you?

THE WITNESS: Yes, sir.

BY MR. CLARK:

Q Mr. Eiss, I show you what has been marked for identification 3507, Exhibit 3507, and ask you to read that over to yourself?

A Thank you, sir.

Q You have read it over?

A Yes, sir.

Q Does that refresh your recollection, Mr. Eiss, as to what date you talked to FBI Agents?

A I think two days or thereabouts.

Q I believe there are two dates on there, one is -- if I am incorrect, tell me. One is an interview day and one is date dictated.

A Interview date was 8/31/73.

Q That would have been the day after the occurance?

A Yes.

Q Does 3507 refresh your recollection as to the description you gave to the FBI Agents ?

A Yes, sir.

Q And what did you tell them?

A I told them that I viewed a man that I thought was older than the one they were thinking, that

I thought he was about 45 to 50 years old.

Q And did you say anything else to him?

A I said I saw the car.

Q Did you tell the FBI Agent that the individual you viewed looked like a million other people?

A Yes, sir.

Q And he was an individual between 45 and 50 years old wearing glasses?

a That's right.

Q Is that what you told them?

A Yes, sir.

Q Now were you ever shown, Mr. Eiss, any photographs by any FBI Agent or State Police officer?

A No, sir.

Q And did there come a time when you were asked to go to a lineup at the Sheriff's Office at the Jefferson County Jail?

A Yes, sir.

Q And were there other people in the same room as you?

A Yes, sir.

Q Do -- viewing the lineup?

A Yes, sir.

Q I show you what is Defendant's Exhibit B and ask you if you can identify that exhibit?

A I believe this might have been the lineup that I saw.

Q Are those the individuals that were in the lineup that you viewed?

A Yes, to the best of my knowledge.

Q Now, Mr. Eiss, an FBI Agent has testified earlier that you selected Raymond Cowles from that lineup?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q Now were there any other individuals in the line-up aside from Raymond Cowles that were similar to the driver of the car that you observed?

A Not that I would think.

Q Isn't it a fact that the other five individuals were dissimilar to the driver of the getaway car?

A I would think so.

THE COURT: Well, you don't know that the car you saw was the getaway car?

THE WITNESS: No, sir.

THE COURT: Then you answer to counsel's last question was inaccurate, wasn't it?

THE WITNESS: That the man --

THE COURT: That anybody resembled the driver of the getaway car?

BY MR. CIARY:

Q I will rephrase that, Your Honor. Did anyone resemble the driver you saw aside from the defendant?

A Yes, sir.

Q Are you now testifying that someone else in the lineup resembled the driver?

AN No, sir.

Q Well, I am a little confused, is it your testimony that the defendant Raymond Cowles is the only one in the lineup that you observed as the driver you saw in the parking lot?

A Yes.

Q Did you notice the clothing of the individual you observed in this car?

A No, sir, I just think I saw a hat.

THE COURT: Did you observe his hair?

THE WITNESS: Yes, sir, had quite long sideburns and quite bushy.

THE COURT: What color was it?

THE WITNESS: I wouldn't remember, sir.

THE COURT: Was it grey?

THE WITNESS: No, sir, it might have been like a greyish tint, because it is quite aways away, and the windshield of the car might have made it look that way.

Q Was it black or were there highlights in it, or dark with highlights?

THE WITNESS: No, sir, I don't believe so.

BY MR. CLARY:

Q Just one further question, Mr. Eiss, you said he had long sideburns?

A Yes, sir.

Q Did they extend down the cheeks some distance ?

A Yes, sir, about down to a point like that (indicating).

Q Beyond the ear?

A Yes.

MR. CLARY: That's all I have.

CROSS EXAMINATION BY MR. LOWE:

Q Mr. Eiss, you testified that to the best of your recollection, correct me if I am wrong, the driver of the car that you observed in the parking lot had a mustache?

A Yes, sir.

Q And did the individual you selected out of the lineup have a mustache?

A I don't believe so.

Q Did there come a time when you realized you were inaccurate as to the age of the person you had observed in the car in the parking lot?

MR.CLARY: I will object to that.

THE COURT: Overruled.

BY MR. LOWE:

Q You may answer the questions.

A Yes, sir.

Q When was that?

A At the lineup.

Q At that point you realized he was not 43, your own age?

A Yes, sir.

Q Now you testified that the other individuals in the lineup were dissimilar in appearance from the person you selected?

A Yes, sir.

Q Were they dissimilar in terms of their general physical characteristics?

A No, sir.

Q They were all males, were they not?

A Yes, sir.

Q Were they approximately the same height?

A Within reason.

Q And approximately the same build?

MR. CLARY: Well, I will object to this, the exhibit is in evidence.

THE COURT: Overruled.

BY MR. LOWE:

Q Were they approximately the same build?

A Yes, sir.

Q Was the clothing of Mr. Cowles distinctive from the clothing of the others?

A No, sir.

THE COURT: What about age of those in the lineup?

THE WITNESS: All nearly the same, I would believe.

BY MR. LOWE:

Q Well, what was dissimilar, in what way was Mr. Cowles dissimilar?

A Well, I believe he has a slightly wider face and a smile.

Q So in other words in his facial appearance he was dissimilar from the others, is that correct?

A Yes, sir.

Q Otherwise the general physical characteristics were the same, is that correct?

A Approximately.

Q Now did you notice -- when you observed the individual in the car in the parking lot, did you notice any particular facial expression about him?

A Yes, sir, a very pleasant smile.

Q You testified that you were going to the bank to make a deposit, Mr. Eiss, and do you recall the amount of that deposit?

MR. CLARY: I object, I don't think that is relevant.

THE COURT: It may be. Overruled.

THE WITNESS: $1500.

BY MR. LOWE:

Q And after you observed this car and this individual you got out of your car and went into the bank?

A Yes, sir.

Q Did you turn your car ignitition off?

A No, sir.

Q Why didn't you?

A It was a very hot day and I left the air conditioner on, and I was very nervous about leaving the car with the ignition running.

Q Was it for that reason you looked around the parking lot?

A That and all cash money.

Q So you observed this car and the other two cars you described because of the amount of the deposit and the fact you wanted to leave your

car running?

A Yes, sir.

Q You took a little more careful look around the parking lot than you normally would?

A Very carefully.

Q You described two other cars in response to the Judge's question that you observed, was there anyone in those cars?

A No, sir.

Q Do you recall seeing any other cars in the parking lot that morning that had an individual in it?

A No, sir.

Q And was this individual that you have described in the car -- in which direction was he looking?

A Straight toward me.

Q So after you made that observation did you then go in the bank?

A Yes, sir.

Q And did you transact your business in the bank?

A Yes, sir.

Q And then did you leave the bank?

A Yes, sir.

Q And who was inside the bank when you left?

A One lady customer, a dark haired girl.

Q Do you recall was she transacting business?

A Yes, sir, to my left at the south side of the bank at the last counter.

Q Do you recall which teller's station that would have been?

A Myrna Culley.

Q Do you transact business at that bank on a regular basis?

A Daily.

Q So when you left the bank there were just the three female employees plus this one customer?

A Yes.

Q Do you have any idea of the age of that customer?

A I wouldn't dare say.

Q Now when you returned to your car did you observe this same automobile you noticed before?

A Yes, sir.

Q '65 or '66 Chevrolet?

A That's correct.

Q And was the individual you have described still in it?

A Yes, sir.

Q And in which direction was the individual looking at that time?

A Straight toward me.

THE COURT: As you returned, was his car

between you and the bank or was he away from you and the bank?

THE WITNESS: Away from the bank, further down the line toward the south.

THE COURT: You didn't pass by his car?

THE WITNESS: No, sir.

THE COURT: Either time?

THE WITNESS: No, sir.

BY MR. LOWE:

Q I can't recall whether I asked this or not, in which direction was the driver of the car looking at that point?

A Straight toward me.

Q Still looking at you?

A Yes, sir.

Q Mr. Eiss, is the individual that you observed in the car that morning in this Court Room at this time?

A Yes, sir.

Q Where is he sitting?

A Straight directly in front of me.

Q This secon' table (indicating)?

A Yes, sir.

Q And is he on your left or right?

A My left, sir.

Q Identifying this individual (indicating)?

A Yes, sir.

MR. LOWE: May the record reflect that Mr. Eiss identified the defendant?

THE COURT: Yes.

BY MR. LOWE:

Q You referred to the lineup proceeding, Mr. Eiss, who contacted you with respect to that lineup?

A The length of time makes me neglect to remember correctly if it might have been C. C. Donohue or FBI Agent Cole.

Q Whoever it was, what did they tell you about the lineup?

A They said there would be a lineup at the Jefferson County Jail, and I think they named a time and a date to be there.

Q And you did go at that time at that date?

A Yes sir.

Q And who was present at that lineup procedure?

A I don't think I can remember them all, but I think now -- I know that it was a Mr. Palmer, a lawyer for the defendant, I don't know his name, there might have been Mr. Clary, I thought it was at that time but apparently I am wrong, a young boy, Mr. Potter, I think an UnderSheriff

was there, and Mr. C. C. Donohue, I think was in and out.

Q Now did you know any of these individuals that you have named before that morning?

A I didn't realize it, but I knew Mrs. Potter and her boy.

Q Well in any event prior to that morning had you talked to any of these people about what you had observed on August 30?

A No, sir.

Q Did somebody give you some instructions as to what would happen during the lineup procedure?

A Yes, sir.

Q Who was that and what did he say?

A It might have been the Under Sheriff, and he said to not talk over between us, just they gave us slips of paper and they said there will be numbers on the men, walk to the window, write the number down and fold it and hand it to the man that was taking the papers.

Q And did there come a time that morning when you stood up to the window?

A Yes, sir.

Q At that time you identified Mr. Cowles?

A Yes, sir.

Q And did you step up to the window just once or twice?

A Just once.

Q It was at that time that you realized you made a correction in the age?

A Yes, sir.

Q Did anyone advise you as to the identity of the person, the name of the person you identified?

A No, sir.

Q Was there any discussion at all that morning?

A No, sir.

Q You then left?

A Yes, sir.

THE COURT: What was there about the defendant's image that made you recall?

THE WITNESS: The face is the only way of identifying, and I had no trouble identifying him.

BY MR. LOWE:

Q Do you have any doubt at this time as to --

MR. CLARY: Object to that, Your Honor, I think that is argumentative.

THE COURT: Sustained.

BY MR. LOWE:

Q You stated you were looking, when you were observing

the individual in the car you were looking through your windshield?

A Yes, sir.

Q And was there anything else in any way obstructing or between you and your view of the individual in the other car?

A The windshield of his car.

Q And it seems to be your recollection that he had a mustache?

A To the best of my recollection.

Q And how about a hat?

A To the best of my recollection.

Q He was wearing a hat?

A I believe so.

MR. LOWE: That's all.

THE COURT: And glasses?

THE WITNESS: Yes, sir.

MR. LOWE: Thank you.

REDIRECT EXAMINATION BY MR. CLARY:

Q I just have a couple on redirect. Did you tell the FBI Agent -- strike that. Do you remember what FBI Agent you talked to on August 30?

A Yes, sir, Agent Cole.

Q And do you recognize Agent Cole?

A Yes, sir.

Q Being in the Court Room?

A Yes, sir.

Q Now did you tell Agent Cole that you observed a mustache?

A I said -- I think I told him I thought he did.

Q And you told us a little earlier that you told the FBI the individual was between 45 and 50 years old, white male, wearing glasses, who looked like a million other people, is that what you told him?

A Yes, sir.

Q Was there anything in the summary about a mustache that you remember reading, Mr. Eiss?

A No, sir.

Q Was there anything in the summary about a hat?

A No, sir.

Q And that conversation was the day after the occurance? Is that correct?

A Yes, sir.

Q Now I believe you said in answer to a question by Mr. Lowe that an attorney was present at the lineup proceeding?

A Yes, I believe he introduced himself to the people as an attorney for the defendant, and I am not sure what the name was now.

Q And you thought that individual was myself?

A Yes, but I realize I am wrong.

Q You realize you are wrong about that now?

A I think so.

MR. CLARY: All right, that's all.

MR. LOWE: Nothing further.

THE COURT: You are excused.

(Witness excused.)

THE COURT: We will take our luncheon recess at this point.

Don't talk about the case, don't let anybody talk about it with you. Be particularly careful now, we are drawing to a close, we don't want to have any mishaps so we have to do this all over again, so be careful.

(Thereupon the luncheon recess was taken.)

AFTERNOON SESSION

MR. CLARY: May it please the Court, Your Honor, Mr. Lowe and I have stipulated that at this point we would read in the testimony of a witness Eugene R. Blair who testified before, and his testimony is not very lengthy.

THE COURT: All right. Is this part of the defense case?

MR. CLARY: This is part of the defense, but

* * * * *

recollection?

A Yes, to the best of my recollection they did.

MR. CLARY: That's all.

MR. LOWE: I have no questions.

THE COURT: You are excused.

(Witness excused.)

MR. CLARY: I have no further witnesses right at this moment.

You wish to approach the bench?

(The following proceedings took place at the bench out of the hearing of the Jury.)

MR. CLARY: The only thing we have left on the issue of the defendant's taking the stand, we have no additional witnesses.

THE COURT: I think I will exclude the prior conviction, evidence of prior conviction here, since it is a robbery it has a tendency to prejudice the defendant and far outweighs the evidentary value of his credibility, particularly in view of the number of eye witnesses to this crime and the importance of his being able to state his side of this case so the jury gets the full story uncluttered with any collateral prejudice of any kind. I will preclude the Government from bringing out the prior conviction.

(The following proceedings took place in the presence of the Jury.)

MR. CLARY: The defense calls Raymond Cowles.

RAYMOND L. COWLES

called as a witness on his own behalf being first duly sworn was examined and testified as follows:

THE COURT: Would you come up to the bench?

(The following proceedings took place at the bench out of the hearing of the Jury.)

THE COURT: You are not to open the door, good character, or anything of that nature. If you open the door, then that ruling doesn't apply. You can't have it both ways.

MR. CLARY: I understand.

(The following proceedings took place in the presence of the Jury.)

DIRECT EXAMINATION BY MR. CLARY:

Q Your full name?

A Raymond Leo Cowles.

Q Keep your voice up, I am going back here so everyone can hear you. How old are you?

A 23.

Q And what is your date of birth?

A 9/2/50.

Q All right, and where do you live?

A Watertown, New York.

Q And what education have you received?

A Got a high school equivalency diploma.

Q And where did you go to high school?

A Watertown.

Q And do you remember August 30, 1973?

A Yes.

Q Raymond, were you in any way involved with a bank robbery at the Marine Midland Bank at the Seaway Shopping Center on that date?

A No.

Q And do you recall where you were on that day, August 30?

A Yes.

Q All right, would you tell the Court and Jury where you were the night before?

A The night before I was at my girlfriend's house.

Q All right, the morning -

THE COURT: I can't hear you. Could you keep your voice up?

THE WITNESS: Yes.

BY MR. CLARY:

Q Where did you spend the night?

A I spent the night at my grandmother's house.

Q Your grandmother's?

A Mrs. Pearl Cowles.

Q Where does she reside?

A 642 Leray Street.

Q And you recall what time you got up the next morning?

A 9:30.

Q What did you do?

A Stretch came over and woke me up.

Q Now Stretch has been referred to earlier as James Johnson?

A Yes.

Q And he came over to your grandmother's house?

A Yes.

Q And that was in Watertown?

A Yes.

Q Now where did you go?

A We went out to the trailer in Glen Park first.

Q And what mode of transportation did you take?

A We had Linda Woods' stationwagon.

Q And is that a white stationwagon?

A Yes.

Q And do you remember the make?

A I believe it is a Ford.

Q And do you recall where you went after you went

after you left the trailer?

A We took Linda Woods and the kids over to Stretch's sister's house on California Avenue.

Q Then where did you go?

A We went looking -- Stretch wanted to find Billy Holland.

Q I am straining and I can't hear you very well. I am sure probably the Jury is having some trouble. Would you try to keep it louder? Stretch wanted to find William Holland?

A Yes, he wanted to talk to him for something, I don't know what.

Q And where did you go to look for Billy Holland?

A On Court Street.

Q And that is in the city of Watertown?

A Yes.

Q And did you find Billy Holland?

A No, we passed the Hitching Post, he thought he was in there but he wasn't. After he passed the

Q Hitching Post he seen his brother Johnny and this other kid.

Hitching Post, is that located on Court Street too?

A Yes.

Q And is Court Street a one way or two way Street?

A One way.

Q Which way were you travelling on Court Street, towards the jail or towards downtown?

A Towards the jail, that's the only way you can go.

Q And what if anything did you do?

A Well, Stretch wanted to talk with his brother, so we stopped the car and he called them over to the car.

Q Who was driving the car at this time?

A I was.

Q And this is Linda Woods' stationwagon?

A Yes.

Q And had you been in that vehicle all that morning?

A Except when we were inside the trailer.

Q Did you use any other vehicle?

A No, we didn't have no other car.

Q Now where did you go from -- strike that. What happened when Stretch talked with his brother?

A Well, he asked him did he want to go swimming, and they said "Yeah."

Q Did they get in the car?

A Yeah.

Q Did you know this other boy?

A No, I didn't know -- I didn't at then know Johnny

either then.

Q And you have seen Johnny testify now?

A Yes.

Q And you knew him on August 30?

A I met him that day, yes.

Q Now where did you go?

A Well, the boys wanted to go to -- I forget where they wanted to go swimming, it is over by Camp Drumm, they wanted to, I wanted to get my boots, so I said "Why don't we go to Crystal Lake because it's out that way."

Q Did you go to Crystal Lake?

A Yes, after we stopped at my house.

Q And did you stop at your house -- what house are you talking about?

A My father's house.

Q And did you stop there?
Where is that located?

A It is about a mile before you get to Theresa, New York and yes I did stop there.

Q What Route?

A Route 37 I believe.

Q And what did you do if anything at your house?

A I got my boots and a shirt. I didn't have no shirt on.

Q Did you have any shoes on before that?

A No, I had my sandles in Pennsylvania when I was camping, but they fell apart.

Q Had you been in Pennsylvania before?

A We just got back about two days before that, camping.

Q And you had no shoes?

A No shoes or shirt.

Q And so you stopped at your father's house and got your boots?

A Yes.

Q And how long were you there?

A About five minutes.

Q And did you do anything else besides get your boots there?

A No.

Q And where did you go then?

A OUt to Crystal Lake.

Q And what did you do if anything at Crystal Lake?

A We drove in and there wasn't nobody there, so we just turned around and came back out.

Q And where did you go from Crystal Lake?

A Over to Glen Park.

Q And is this the same trailer that you were at

earlier that day?

A Yes.

Q And was this Linda Woods' trailer?

A Yes, it was, she rented it.

Q And what did you do if anything there?

A The boys -- Johnny got photographs out, Stretch was showing us all the pictures, he has about six boxes full of pictures.

Q Are these Stretch's pictures?

A Yes, pictures he took, yes.

Q And what if anything else happened?

A I don't know.

Q Well, do you remember looking at the pictures?

A Yes.

Q Did there come a time when the boys left, Johnny Johnson and Wayne Prosser?

A Yes, his mother came, Johnny's mother did.

Q What happened to you and Stretch?

A We stayed there, listened to records for about an hour.

Q Then where did you go?

A Went down to Skid Row to see if Billy was down there.

Q When you say Skid Row -- Court Street, excuse me, they call it Skid Row. Why do they call it that?

A It's a dump.

Q There's some bars, are there?

A Yes.

Q And it is a pretty run down area?

A Yes.

Q Now what did you do after that?

A Billy wasn't there, so I told Stretch to drop me off at my girlfriend's house.

Q And do you happen to know what time of the day it was when you were dropped off? Whether it was in the afternoon, morning or what?

A Between 3:30 and 4:00 in the afternoon.

Q Now were you working at the time of August 30, on this date?

A No, I got laid off about three weeks before that.

Q And who had you been working for then?

A Adorn Booth Construction Company.

Q Had you had any job since then?

A Not since then.

Q Did you work for a Richard Bennett at any time?

A Yes, I worked for him for two weeks before my arrest.

Q And that was -- when were you arrested?

A September 10, I believe.

Q And that is about two weeks after this date that

we are talking about, the day of the bank robbery?

A Yes.

Q Were you working in between that time?

A Yes.

Q What kind of work did you do?

A He was a general contractor, he was building storm walls around cottages on the lake.

Q Where did you work, do you remember?

A Right on Lake Ontario.

Q And in the Watertown or Jefferson County area, is that right?

A I think it is in that area, yes, I am not sure.

Q Lake Ontario is near Watertown?

A Yes.

Q Raymond, did you drive any other vehicle other than this white stationwagon on August 30, 1973?

A No.

Q Have you ever owned a red convertible or any one in your family owned a red convertible?

A Not to my knowledge, no, I have never owned a car.

Q You never owned a car?

A No.

Q Did you in any way participate in the robbery that we are talking about here the last four or five days?

MR. CLARY: Thank you. That's all.

CROSS EXAMINATION BY MR. LOWE:

Q Mr. Cowles, do you remember being interviewed by an FBI Agent named Michael Zawosky?

A Yes.

Q Do you recall when that interview took place?

A The evening of September 10 I believe.

Q And did Agent Zawoski identify himself?

A Yes, he did.

Q And did he tell you what he wanted to talk to you about?

A He said he wanted to ask me some questions about a bank robbery.

Q Did he advise you of certain of your Constitutional rights?

A Yes.

THE COURT: I am afraid that isn't satisfactory.

BY MR. LOWE:

Q After identifying himself Mr. Cowles, what did Agent Zawosky say to you?

THE COURT: You can lead.

THE WITNESS: He just asked me some questions.

MR. LOWE: Would you mark this for identification?

(Document marked Government's 21 for identification.)

BY MR. LOWE:

Q Mr. Cowles, I show you Government's Exhibit 21 for identification and ask you if you can identify that?

A Yes, this is a waiver of the rights, when they give you your rights they ask you to sign this before they ask you questions.

Q Does your signature appear on that document?

A Yes.

Q Did you sign that in front of Agent Zawosky?

A Yes.

THE COURT: Did you understand it?

THE WITNESS: Yes, I did.

MR. LOWE: Could I read it, Your Honor?

THE COURT: Yes.

MR. LOWE: I will offer it in evidence.

MR. CLARY: I have no objection.

THE COURT: Received.

(Exhibit 21 marked in evidence.)

MR. LOWE: Exhibit 21 reads --

MR. CLARY: Well, I have no objection to reading it, but is it necessary if it is in evidence?

THE COURT: I don't think you need to read it at this time unless there is an issue --

MR. LOWE: Did you understand --

THE COURT: He told me he did.

MR. LOWE: Thank you.

BY MR. LOWE:

Q Do you remember discussing with Agent Zawoski where you were on the morning of August 30?

A I told him I wasn't sure where I was, because I hadn't even thought about it. I told him where

Q I thought I was.

Q And where was that?

A I said I was either at my grandmother's or my girlfriend's house.

Q And --

THE COURT: When did Agent Zawosky interview you?

THE WITNESS: On the evening of September 10.

THE COURT: Ten days after the occurance here, eleven?

THE WITNESS: Yes.

BY MR. LOWE:

Q And on that date you testified you couldn't remember for certain, but you thought you were at your grandmother's or your girlfriend's house?

A Yes, because I hadn't even thought about the day.

Q Did you know, Mr. Cowles, had you heard about

the robbery at the Marine Midland Bank?

A I heard it on the radio and read it in the paper.

Q Did anyone have any discussion with you concerning it?

A My girlfriend said it looked like my picture in the paper.

Q Your girlfriend said it looked like your picture? What picture is that you are referring to?

A That composite you are referring to.

Q I show you Defendant's Exhibit A in evidence, is that the composite you are referring to?

A Yes.

Q Your girlfriend had said to you that you looked like this composite?

A Yes.

THE COURT: When did she tell you that?

THE WITNESS: A couple of days after the robbery, around the first of September.

BY MR. LOWE:

Q She said that to you before you had a -- your discussion with Agent Zawosky?

A Yes.

Q Did you on that occasion advise Agent Zawosky as to something Richard Strat had told you?

A Richard who?

Q Do you know who Richard Strat is?

A No.

Q Perhaps I am mispronouncing, do you have a brother and sister -- brother-in-law Barbara and --

A (Interrupting) Straiter, yes.

Q Excuse me. Did you discuss with Agent Zawosky a conversation you had with Richard Straiter?

A Not a conversation I had with him, a conversation I had with my sister.

Q What was that conversation?

A Well, my sister had called me up on the telephone on the afternoon of Setpember 1, and she just bailed her husband out of jail for DWI, driving while intoxicated and she said while she was at the police station one of the police officers said "look up Ray Cowles' picture and see what we had him on before," and "he is probably the man you want."

Q And did she relate to you what they wanted you for, what they might want you for?

A I guess it was to do with the bank robbery, she didn't say.

Q You guessed that that is what she was talking about?

A Probably, yes.

Q And this conversation with your sister took place around September 1?

A Yes.

Q And also you just testified that Agent Zawosky when you first interviewed you said he wanted to talk to you about the bank robbery at the Marine Midland Bank?

A Yes.

Q So prior to your interview with Agent Zawosky your girlfriend had told you you looked like the composite, your sister had told you that some individual had mentioned you in connection with the robbery, and Agent Zawosky in introducing himself said he wanted to talk to you about the bank robbery.

MR. CLARY: I object.

THE COURT: Sustained. Save your summary for later. Put your questions now.

BY MR. LOWE:

Q In any event, you as of September 10 when you talked to Agent Zawosky, you hadn't thought where you had been on August 30?

A No.

Q You told Agent Zawosky to the best of your

recollection you were either at your grandmother's or with your girlfriend?

A Yes.

Q Do you remember talking to Agent Zawosky about Stretch Johnson?

A I said I knew Stretch Johnson.

Q You remember anything else you told Agent Zawosky about Stretch Johnson?

A I said I was riding with Stretch Johnson, we were stopped twice by the police.

Q Remember anything else you told Agent Zawosky about your relationship with Stretch Johnson?

A No.

Q What was that date that you were with Stretch Johnson and got stopped by the police, do you recall?

A Then I thought it was the same date as the robbery, I think, on a Thursday or Friday, but I think now it was the first.

Q First of September?

A Saturday?

Q Yes.

A I am not positive, but I think it was the first, it was Friday the 31st or Saturday the 1st.

Q Did you tell Agent Zawosky when the first time

was you met Stretch Johnson?

A In 1969.

Q And then did Agent Zawosky ask you how many times you had seen Stretch Johnson since 1969 and before September 10, 1973, the date of the interview?

A I don't believe I did.

Q You don't believe you told him how many times you had been with Stretch?

A I don't recall telling him how many times.

MR. LOWE: Could we mark this?

(Document marked Government's Exhibit 22 for identification.)

THE COURT: Put it in the form of a leading question, "did you say so and so?"

BY MR. LOWE:

Q Did you tell Agent Zawosky, didn't you tell Agent Zawosky that since 1969 you had only seen Stretch Johnson on one occasion, which was on the date that you were stopped by the police?

A I don't recall that.

Q You don't recall that?

A I have only seen him about four times.

Q You recall telling Agent Zawosky you had only

seen him once which was the day you were stopped by the police?

A I don't recall that.

Q You referred several times in your testimony to a William Holland or William Howland, Mr. Cowles, who is William Howland?

A He is somebody I met in 1969 also.

Q And had you seen him around this period of time, around August 30?

A No, I hadn't seen him on August 30, I had seen him twice since 1969. He is a friend of Stretch's.

Q You referred to having been in Pennsylvania, this was a couple of days before August 30?

A We returned on Tuesday, I believe it was the 28th.

Q And where had you been in Pennsylvania?

A German, Stretch's sister.

Q Is that in the Pocono Mountains?

A I don't know.

Q And did you see Billy Howland In Pennsylvania?

A Yes I did.

Q Was Billy Howland in Pennsylvania at that time?

A No, he wasn't.

Q Do you know James Gaither?

A I didn't until I met him in Albany, the night

I went to Albany.

Q And were you in the same cell block with Mr. Gaither in Albany?

A Yes, I was.

Q Did he tell you about the Middleville Bank robbery which he had been involved in?

A Myself and everyone else in the cell block.

Q Did you discuss with him how your Court proceeding in Albany was progressing?

A Not particularly, no. I would come back from Court and everybody in general would ask me how it went that day.

Q Well, on August 30, Mr. Cowles where were you when you heard about the bank robbery, did you hear about it on August 30?

A On the road.

Q Where were you then?

A On the way to my house.

Q I am sorry?

A On the way to my house.

Q And what time was that?

A Five to eleven, something around there.

Q Was there any discussion at that time between you and Stretch and the two boys about going over to the bank and seeing what was going on?

A No, there wasn't, I wasn't saying much of anything, I was pretty sick.

Q I think you testified, Mr. Cowles, that the boys -- I mean Wayne and John, when you met them on Court Street, they said they wanted to go swimming?

A No, Stretch asked them did they want to go swimming.

Q Had you and Stretch talked about going swimming?

A No, not really.

Q You were looking for Billy Howland?

A Stretch was looking for Billy Howland.

THE COURT: Did you have bathing trunks with you?

THE WITNESS: No.

BY MR. LOWE:

Q Do you know if there is a telephone at Linda Woods' trailer?

A Yes, but it's not hooked up.

Q Have you seen Stretch Johnson since you have been arrested?

A Twice, while he was in jail.

Q And when would that last time have been?

A December of January, I forget which. He got ten days for public intoxication.

Q You mean this past December of January?

A Yes.

Q That was the last time you talked to him?

A Yes.

Q And you talked to him on one other occasion before that?

A When he was in before that, before he got out on bail he was in on an assault charge.

Q Did you talk to him on those occasions about the events of August 30?

A Not particularly, no.

Q Did you ever talk to Stretch about the events of August 30?

A We have discussed it, but never sat down and talked about it, passing conversation, we have discussed it.

Q Passing conversation, you have discussed it with him?

A Yes. Somebody new would come in the cell block and say "Weren't you the guy involved in the bank?" and the subject would pop up.

Q I am talking about you and Stretch?

A By ourselves?

Q Or with anyone?

A Not really, no.

Q Stretch knows that you are innocent, doesn't he?

A Yes.

Q And you just have passing conversations with him?

A There wasn't much he could do.

Q Did you ever ask him to come into Court and testify for you?

A No.

Q So you just had passing conversations. Isn't he outraged about what's going on?

A Not really, something that's expected really.

Q What is expected?

A Well, they can't find somebody else, they push it on somebody that's got a record.

Q So Stretch is just resigned to that?

MR. CLARY: I object to that.

THE COURT: Sustained.

BY MR. LOWE:

Q In the conversations you had with Agent Zawosky on September 10, do you recall him asking you whether you had been near the vicinity of the Seaway Shopping Plaza on the morning of August 30?

A No, he asked me if I had been in the vicinity

of the Marine Midland Bank.

Q He did ask you if you were in the vicinity of the Marine Midland Bank?

A Yes.

Q And what did you tell him?

A I told him no.

Q On September 10 you told him you had not been in the vicinity of the bank?

A Yes, because I didn't even know where the bank was.

Q You didn't know the Marine Midland Bank was located at the Seaway?

A When Inspector Semione took me to jail that night I asked him where it was.

Q Have you lived in Watertown all your life?

A No.

Q How long have you lived in Watertown?

A I have lived in Dexter, New York. I lived in California.

THE COURT: Where were you riding on the way out to the lake?

THE WITNESS: On Route 37.

THE COURT: But where in the car were you sitting?

THE WITNESS: I was driving.

THE COURT: Did you have the radio on?

THE WITNESS: Yes.

THE COURT: Was there an announcement about the bank robbery?

THE WITNESS: Yes, there was.

THE COURT: Did you hear it?

THE WITNESS: Yes.

BY MR. LOWE:

Q I was asking you how long you lived in Watertown and you started mentioning some other places you lived, what is the total number of years you lived in Watertown?

A 10, 12.

Q And when you were with Stretch and Wayne and John on this particular day driving along Route 37 and going to Crystal Lake, before that being at your father's home at Theresa, and after being at Crystal Lake, Glen Park, was anyone giving you the directions?

A No.

Q Telling you how to go?

A No.

Q You were finding your way around by yourself?

A Yes, I know my way but I don't the names of places, like if somebody said "go to this street,"

I might know the street but I might not know the name of it.

Q And it is your recollection Agent Zawosky asked you whether you had been near the vicinity of the Marine Midland Bank on August 30?

A Yes.

Q And you don't recall saying -- you don't recall him saying to you "Were you near the vicinity of the Seaway Shopping Plaza?"

A May have said it that way.

Q He may have said that?

A But there's eight or nine shopping centers in Watertown, I don't know the names of half of them.

Q This interview took place on September 10?

A Yes.

Q And as of that time you were familiar, yo knew that the bank had been robbed?

A Yes.

Q And hadn't it gotten quite a bit of publicity?

A Reasonable amount, yes.

Q It was in the newspapers?

A Yes.

Q It was on TV?

A Yes.

Q And several people had spoken to you about there being a possibility of your being connected with it, is that correct?

MR. CLARY: I object.

THE COURT: Sustained. Repetitive and it is argumentative.

BY MR. LOWE:

Q But when you read about the robbery in the newspaper or heard about it on TV you didn't hear any reference to the fact that the Marine Midland Bank was located at the Seway Plaza?

A I heard it, yes, I didn't know where the Seaway Shopping Center was. I knew there was a shopping center there but I wasn't sure of the name of it.

THE COURT: Had you in fact been near there, now that you know --

THE WITNESS: I drove past it, yes, the road I was on went past it.

BY MR. LOWE:

Q But when you heard on the TV or read in the newspaper that the particular Marine Midland Bank that was robbed was located at the Seaway Shopping Plaza, you knew which Shopping Plaza it was?

A I thought the shopping cneter they were talking

about was up on Arsenal Street.

Q So as of August '73 or September '73 you weren't sure where the Seaway Shopping Center was or the Marine Midland Bank was?

A No, not really.

Q How many stores are there in the Seaway Shopping Plaza, do you have any idea?

MR. CLARY: I object, this is argumentative.

THE WITNESS: No.

BY MR. LOWE:

Q You don't know. That's all, Your Honor.

REDIRECT EXAMINATION BY MR. CLARY:

Q To your knowledge, Raymond, are there several Marine Midland Banks in Watertown?

A Yes, I believe so.

Q And are there a number of shopping centers in Watertown?

A Yes, about eight I think.

Q And do some of them have various names?

A Yes.

Q Such as Northland Shopping Center?

A Yes.

Q And others like that?

A Yes.

Q And are there banks in most of these shopping

centers?

A I believe so, yes.

MR. CLARY: Thank you. That's all I have.

THE COURT: You are excused.

MR. CLARY: Your Honor, at this point the defendant rests.

THE COURT: I will make the same ruling on the same motions as before.

MR. LOWE: The Government calls Thomas Hefferon.

THOMAS H. HEFFERON

called as a witness on behalf of the Government in rebuttal, after being first duly sworn was examined and testified as follows:

THE COURT: Will you come up to the bench?

(The following proceedings took place at the bench out of the hearing of the Jury.)

THE COURT: I think you better make the motion right now.

MR. CLARY: I move to dismiss the charge against the defendant onthe grounds that after the prosecution and defense the Government has not made out a prima facie case, and that further a verdict of guilty would be against the weight of the evidence, and we move for a directed

* * * * *

(The following proceedings took place in the presence of the Jury.)

THE COURT: I direct the Jury to disregard the testimony of this witness. You may step down.

(Witness excused.)

MR. LOWE: The Government calls Michael Zawosky.

MICHAEL D. ZAWOSKY

called as a witness on behalf of the Government in rebuttal, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION BY MR. LOWE:

Q Mr. Zawosky, are you employed?

A Yes, I am.

Q And by whom?

A Federal Bureau of Investigation.

Q How long have you been so employed?

A Three years.

Q Three?

A Yes, sir.

Q Did you participate in the investigation in the Marine Midland Bank robbery that occured on August 30, 1973?

A Yes, I did.

Q And have you ever talked with Raymond Leo Cowles?

A Yes, I have.

Q And when did you talk with Mr. Cowles?

A September 10, 1973.

Q Mr. Cowles is in the Court Room at this time?

A Yes.

Q Where is he sitting?

A In front of you.

Q Now when you first met Mr. Cowles, how did you identify yourself?

A As Michael D. Zawosky, Special Agent for the Federal Bureau of Investigation.

Q Did you tell him what the purpose of the interview was?

A Yes, I was investigating the robbery of that bank, and that I wanted to interview him in regard to that.

Q Now did you discuss with Mr. Cowles any of his Constitutional rights?

A Yes, I did.

Q What did you say to him in that respect?

MR. CLARY: Well, if Your Honor please, maybe I can cut it short. I think we pretty much admitted it, we signed a waiver and knew what the contents were.

THE COURT: Yes.

BY MR. LOWE:

Q Fine. Did you ask Mr. Cowles whether he was involved in any way in the Marine Midland Bank robbery of August 30?

A Yes.

Q What did he say?

A No, that he wasn't in no way.

Q Did you ask Mr. Cowles whether he was near the vicinity of the Seaway Shopping Plaza on the morning of August 30?

A Yes, I did.

Q What did he say?

A In no way.

Q He said he was not in any way near the vicinity of the Shopping Plaza?

A That's right.

THE COURT: Did he say anything to the effect he didn't know where it was?

THE WITNESS: No.

BY MR. LOWE:

Q Did you ask him if he could recall where he was the morning of August 30?

A Yes, I did.

Q And what did he say?

A He stated that he believed, he was not specifically sure where he was, but that he believed that he was either at the residence of his grandmother, who lives on Leray Street in Watertown, or he was visiting one Sandra Jones who lives on Cooper Street in Watertown, New York.

Q Did you ask Mr. Cowles if he knew Stretch Johnson?

A Yes.

Q And what did he say?

A He said that he met Stretch Johnson in 1969, and on only one other occasion did he meet him, and that was one day in late August 1973 or early September 1973, he was hitchhiking to the home of his parents, Cowles was, in the vicinity of the Thompson Park in Watertown, and that Stretch came by in a white stationwagon and with another white male and picked him up and took him to his parents' residence.

Q And did he relate to you whether there was any conversation between himself and Stretch?

A He said that they briefly conversed about what each other had been doing since they last saw one another in '69.

Q Did he relate to you whether anything involving the police developed while he was with Stretch

on that occasion?

A He indicated that they were stopped by the Watertown Police in -- and questioned, and there were guns found in the car, or something, and they let him go.

Q And he stated to you this was the only occasion since 1969 when he had seen Stretch Johnson?

A That's correct.

Q And the date of this interview was what?

A September 10, 1973.

CROSS EXAMINATION BY MR. CLARY:

Q Mr. Zawosky, isn't it a fact on September 10, 1973 you asked Mr. Cowles if he was near the vicinity -- or excuse me, at the Marine Midland Bank in the Seamay Shopping Center on August 30?

A I don't think I asked him that specific question.

Q You don't remember asking him that. Did you participate in the arrest, in an arrest of Mr. Cowles on September 10, 1973?

A I accompanied State Police to his residence.

Q And that was where?

A North of Pamelia, Theresa.

Q Pamelia, north of Pamelia?

A Yes.

Q And in Theresa, New York?

A Wherever is his father and step-mother lived.

Q Who accompanied you on that night if you can recall, if you can't, you can't.

A Robert Semione, BCI New York State Police and two other BCI Investigators.

Q And any other FBI Agents beside yourself?

A No.

Q And what time of the day was this?

A This is in the evening.

Q About what time?

A Somewhere between, say, five and seven.

Q And was Mr. Cowles placed under arrest?

A Yes.

Q For bank robbery?

A No.

Q Do you know what the charge was?

A Violation of probation, parole, I don't know for sure.

Q Isn't it a fact that he was arrested for possession of a couple of .22 rifles?

A I don't know.

Q Well, you talked to him did you not on September 10 about these guns, you told Mr. Lowe about it.

A I questioned Mr. Cowles in regard to his knowledge of Stretch Johnson, and in questioning

him about that he related that he met Stretch Johnson -- again, well, just like I gave the previous testimony, someday in late August or early September when he was hitch-hiking to his parents and talked with him briefly.

Q My question is this, wasn't the subject of this charge the fact that certain rifles were in Stretch Johnson's car on that day that Cowles was picked up hitch-hiking?

A I said I don't know, I was under the impression they arrested for violation of probation, I am not sure of the reasons for the arrest.

Q But it was in connection with this bank robbery?

A No.

Q And yet you went along, an FBI Agent?

A Right.

Q And this was a State charge or a local charge.

A That's correct.

Q And what if anything did you do at the residence of Raymond Cowles that evening?

A I stood around.

Q What did you observe?

A Them place Mr. Cowles under arrest.

Q Did you observe the search of Raymond Cowles

home on that evening?

A I believe when they arrested him they checked the home.

Q Checked the home?

A Yes.

Q With crowbars?

A They had asked him if they could check his room, I think they asked him and his father if they could search his room, and they consented and they did.

Q And they didn't just look, did they?

A I think there was a board in the floor or something that was new, and they asked if they could check under the board, and I think they did that.

Q And in fact they pried up boards in the bedroom and looked under them.

A I think a board, there was a new board there, I think they did that.

Q They searched his bedroom?

A That's where the board was.

Q I mean they searched the rest of the bedroom?

A Yes.

Q Searched the house?

A No.

Q Just the room?

A Yes.

Q Was anything found that in any way related the defendant Raymond Cowles with the bank robbery?

A I don't know what they came up with, I don't think so.

Q You didn't talk to them about it afterwards?

A I was concerned with interviewing Mr. Cowles.

Q You didn't care what they found?

A No, my purpose was to --

Q But you were investigating a bank robbery, were you not?

A Yes, that's correct.

Q And in the interview of September 10, 1973 Mr. Cowles said he was not involved in any way in that bank robbery at Watertown, is that correct?

A He had no knowledge of the bank robbery, he in no way was involved in it, he in no way was near the shopping center.

Q I asked you, Mr. Zawosky, if Raymond Cowles told you at any time during this interview on September 10 that he was involved in this bank robbery.

A He didn't, he said in no way was he involved

in the bank robbery.

MR. COWLES: That's all.

MR. LOWE: Just one or two questions, Your Honor.

REDIRECT EXAMINATION BY MR. LOWE:

Q Agent Zawosky, what office of the FBI are you assigned to at this time?

A Burlington, Vermont.

Q And as of August 30 where were you assigned?

A Burlington, Vermont.

Q Were you here on special assignment in connection with this investigation? By here I mean Watertown?

A Not on August 30, later.

Q On September 10 and during the period of your investigation?

A Right.

Q You testified that you can't be sure if you asked Ray Cowles whether he had been in the vicinity, near the vicinity of the Marine Midland Bank on the morning of August 30, 1973, is that correct?

A Could you --

Q You are uncertain whether you said to Cowles "Were you near the vicinity of the Marine Midland Bank on the morning of August 30?"

A The shopping center, not the bank.

Q You did ask him whether or not he was near the shopping center?

A Right.

Q You are uncertain as to whether you asked him about the Marine Midland Bank specifically?

A Right.

Q And when the State Police were searching Cowles' home they pried up one board to your knowledge, I believe?

A I know there was a new board in the floor and they asked if they could check under it.

MR. LOWE: That's all, Your Honor

RECROSS EXAMINATION BY MR. CLARY:

Q I just have one question. Did you ask Mr. Cowles also if he was in the vicinity of the New York Air Brake Company?

A Yes, I did.

Q And what was his response?

A In no way.

Q Do you know where the Air Brake Company is in Watertown?

A Yes.

Q And that is located where?

A I would estimate within approximately a quarter to

a half mile from that shopping center.

Q It is not on Route 37, though?

A I am not familiar with route numbers.

Q Well, it is not on Route 11 to the best of your knowledge?

A I am not familiar with where Route 11 is.

Q Did you know Mr. Zawosky when you were interviewing Mr. Cowles whether or not he knew which shopping center was the Seaway Shopping Center?

A I felt that he knew at the time.

Q Well, that is not my question, did you know whether he knew it or not?

A I think from the way he was answering the questions that I was asking him that -- I was under the impression he knew.

Q Have you ever been to the Seaway Shopping Center?

A Yes.

Q Did you see a big sign that said Seaway Shopping Plaza?

MR. LOWE: If -- In fact there is no sign. I object, Your Honor.

THE COURT: Yes.

BY MR. CLARY:

Q Just one further question, do -- to your knowledge are there a number of branches of the Marine

Midland Bank in the Watertown area?

A I think there's one other one.

Q Well would it be more than one or do you know?

A I don't know, I think there is another one.

MR. CLARY: Thank you. That's all.

REDIRECT EXAMINATION BY MR. LOWE:

Q One question, Your Honor. When you asked Mr. Cowles whether he had been the vicinity of the Seaway Shopping Center the morning of August 30, did he ask you where the Shopping Plaza was, did he say he didn't know where it was?

A He said "In no way."

Q Did he say "I don't know where that shopping plaza is" or "I never heard of it?"

A No, he didn't say that.

MR. LOWE: That's all.

THE COURT: You are excused.

(Witness excused.)

MR. LOWE: Could we approach the bench, Your Honor?

(The following proceedings took place at the bench out of the hearing of the Jury.)

MR. LOWE: With the exception of the testimony from Mr. -- the witness that I offered,

Proceedings, dated 2-8-74.
Defendant's Proposed Instruction No. 1.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

Plaintiff,

-vs-

CRIMINAL NO.
73-CR-167

RAYMOND LEO COWLES,

Defendant.

PROPOSED INSTRUCTION NO. 1

Where the prosecution has offered identification testimony, i.e., the testimony of an eyewitness that he saw the defendant commit the act charged, such testimony should be received with caution. An identification by a stranger is not as trustworthy as an identification by an acquaintance. Mistaken identification is not uncommon. The witness' opportunity to observe the perpetrator during the commission of the act charged is of great importance in determining the credibility of his identification. The testimony of the witness that he is positive of his identification may be considered by you, but does not relieve you of the duty to carefully consider his identification testimony and to reject it if you find that it is not reliable. Careful scrutiny of such testimony is especially important when, as in this case, it is the only testimony offered by the prosecution to connect the defendant with the act charged.

Cipes, Criminal Defense Techniques, Vol. 1, Section 2.16

GIVEN:_____

GIVEN AS MODIFIED:_____

NOT GIVEN:_____

(The following proceedings took place out of the presence of the Jury.)

THE COURT: I think at this point you are entitled to have your rulings on your requests to charge.

I will grant in substance your requests concerning identification testimony, with modifications which take the argumentative nature out of it. I will pose the factors that the Jury should consider along the lines that you request.

I will decline to give your final instructions on reasonable doubt. I will give only one instruction on reasonable doubt. I will of course state the burden remains on the Government as in your alibi instructions to prove the defendant was there, and that it was the defendant who commited the crime.

MR. CLARY: I assume the alibi instructions will be given?

THE COURT: The alibi will be given almost as you requested it.

MR. LOWE: Your Honor, I apologize, I had planned to submit to you this afternoon requests to charge concerning false exculpatory statements.

THE COURT: That won't be necessary, but if you make up a request I will give it.

MR. LOWE: I will make such a request.

THE COURT: I will give it.

MR. LOWE: Thank you.

THE COURT: False exculpatory statements.

(Thereupon a recess was taken to February 11, 1974 at 10:30 a.m.)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

-UNITED STATES OF AMERICA

-against-

-RAYMOND L. COWLES

Criminal No. 73-CR-167

The following proceedings took place at the United States District Court, Federal Building, Utica, New York, continuing on the 11th day of February, 1974, before HONORABLE LLOYD F. MacMAHON, United States District Judge, sitting by designation.

A P P E A R A N C E S:

JAMES M. SULLIVAN, JR.
United States Attorney
GEORGE LOWE
Assistant United States Attorney
Of Counsel
Attorney for United States of America
Federal Building
Syracuse, New York

DEFENDANT IN PERSON and by
LEE CLARY, ESQ.
Attorney for Defendant
Watertown, New York

(The following proceedings took place in Chambers.)

THE COURT: All right.

MR. LOWE: The Government moves, Your Honor, to reopen its case solely for the purpose of putting -- well, in fact reading in the testimony of Mr.Hefferon, primarily on the basis of United States against Burger which we discussed in Chambers last week. Mr. Hefferon will testify as to a prior inconsistency in a statement made by the witness Wayne Prosser.

THE COURT: And you say the Court's ruling was erroneous on that, do you?

MR. LOWE: Well, I thought it was, Your Honor.

THE COURT: I think on reconsideration and studies the Court's ruling was erroneous, particularly in view of Judge Friendly's case United States against Burger, and also McCormick and Wigmore both to -- both seem to say you can call another witness to impeach by a contradictory statement he made to that witness. Of course this rule works both ways. I also cut you off, Mr. Clary. Do you wish to recall the witness that I stopped -- well, I didn't stop you, I permitted you to go.

MR. CLARY: I think not.

THE COURT: But I may have chilled your effort to go further.

MR. CLARY: I have no further questions that I would direct to FBI Agent Dorton at this time.

THE COURT: All right, I will grant your motion to reopen.

MR. LOWE: Thank you, Your Honor.

There is one other problem that I have. You might recall that when Agent Zawosky was on the witness stand he was asked by Mr. Clary whether or not there was a sign at the Seaway Shopping Plaza. Agent Zawosky said yes he thought there was, and Mr. Clary --

THE COURT: Said no there wasn't.

MR. LOWE: And I objected, of course, but the damage was done, in fact there was a sign. I have a photograph of it here. I wouldn't make anything of it if there were not a sign, but my witness has been discredited in a particularly harmful way and I would like to simply stipulate that there is a sign.

MR. CLARY: Well, the question that I asked may not have been proper, and it was objected to

and it was stricken. I think he testified that he thought there was a sign. I was apparently mistaken, there apparently is a sign there, but I don't see how that allows the Government to come in and produce pictures or stipulations or what not, I don't think that is proper.

MR. LOWE: If it had been a question --

THE COURT: I will let you reopen if you want to prove there was a sign.

MR. LOWE: All right. We have agreed if you allow us to reopen we will simply stipulate.

THE COURT: We are after the truth.

MR. CLARY: Yes, I am not questioning that it was an error in recollection on my part, I didn't think there was any.

THE COURT: The error, you were testifying in asking the question.

MR. CLARY: Yes, I asked the question improperly, I will admit that.

THE COURT: All right.

(The following proceedings took place in Court in the presence of the Jury.)

MR. LOWE: Your Honor, the Government moves at this time to reopen its case for the purpose of reading into the record the testimony of Thomas

* * * * *

MR. CLARY: I believe after finally receiving the rules that my motion should be for a judgment of acquittal at the end of the proof in this case and I make that motion.

THE COURT: Denied.

MR. CLARY: O.K. Exception.

(The following proceedings took place in the presence of the Jury.)

THE COURT: All right.

MR. CLARY: May it please the Court, Mr. Lowe, ladies and gentlemen of the Jury. At this point in the trial the proof has been completed, the evidence is over and it is now the function of myself for the defendant and Mr. Lowe for the prosecution to tell you our closing arguments or our closing thoughts on the proof in this case.

Now at the very outset I would like on behalf of myself and the defendant to thank you for your attention and your patience in the course of this trial. This is the sixth day and it has been kind of a long trial, not overly long one, but it has been a somewhat arduous task for you just to sit and listen to a lot of testimony, a lot of witnesses, and decide a case. It is no easy job. We appreciate the service, of course, that you people have rendered

in connection with this case.

Now the order that we go in is determined by the law, and the law says that the defense counsel is first and the U. S. Attorney is second, or concludes the arguments.

I only bring that up because obviously I cannot rebut or I cannot answer any arguments Mr. Lowe raises in his closing argument. He has the last word. That is set up by the procedure of this Court and all Federal Courts. So I will have to by necessity anticipate in effect what some of his arguments may be and try to answer them at this point, and I hope I can do that without a lot of argument, just for -- just so that you folks understand that I do have to go first and cannot rebut Mr. Lowe.

Now as I indicated and as the Judge indicated to you in his questioning of you as Jurors the defendant Raymond Cowles stands accused of a very serious crime, that of being a driver of a car used in a bank robbery at the Marine Midland Bank in Watertown.

Now the fact, and the Judge has also instructed you on this, the fact that the defendant has been indicted is no proof of anything against him, it is a charge, it is simply that and nothing more, and you

all agreed you would follow the Judge's instructions on the law and that is a basic fundamental right, it is a charge, it is a proof of nothing. The defendant stands presumed innocent until proven guilty by the Government beyond a reasonable doubt.

Now I asked you ladies and gentlemen when I made my opening remarks that you would consider very seriously those fundamental principles of our system in your deliberations as Jurors, and you all agreed that you would follow of course the Judge's charge, and I believe that he will say something to you about presumption of innocence and about proof beyond a reasonable doubt.

They are not phrases, they are not just idle talk, they are not legal technicalities, they are fundamental rights granted to anyone accused of a crime, and I hope that in your deliberations you would consider very carefully these particular rights.

Now what is this case all about? We stipulated at the outset that on August 30, 1973 there was a robbery at the Marine Midland Bank, the Seaway Shopping Center just outside of Watertown. There is no dispute about that fact.

Secondly we stipulated that the deposits of that bank are insured with the Federal Deposit Insurance

Corporation. There is no argument on either side about that fact.

Thirdly, we stipulated that a sum of money, and I believe it was in excess of $36,000 was taken from the bank on that day. No dispute about that, we are not going to force the Government to bring in witnesses and testify about things that are -- that we are not arguing about.

All right. At the point the stipulations ceased. We do not concede anything more on the defendant's case, and we very definitely make the point that as far as Raymond Leo Cowles is concerned he did not participate in that robbery. That is the defense in this case, and I told you that it would be a rather simple, not a complex defense. The issue is simply he was not involved.

Now what has the Government produced as evidence against the defendant? Let me say at the outset at this point that if I mention testimony or mention what I consider to be the testimony of certain witnesses in this case, and it conflicts with your own recollection of what those witnesses testified to, your job and your function is to take your recollection, not mine, take whatever you remember the witness said and if it differs with what I say

forget what I say because it is your recollection that counts.

You noticed that during the course of the trial I have taken notes, and it has been five days of testimony and I may have not taken everything down correctly, and when I am examining the witness I am in no position to take notes, so I am fallible, I am a human being, I could make a mistake and if I did and your recollection differs please take your recollection.

The Government has introduced or put on the stand witnesses who have testified that they saw Raymond Cowles in this car in front of this bank. Now three witnesses, I believe Mr. and Mrs. Schultz and Jeffrey Potter say that the driver was Raymond Cowles and he was in this Chevy in front of the bank.

Mr. George Eiss testified and he says that before any bank was robbed he observed a person whom he said was Raymond Cowles in a Chevy in the parking lot. Then I believe you will recall Charlotte Palmer testifying. We read her testimony in that after a robbery occured that she observed a person driving a red convertible, I believe on Starbuck Avenue over near the Air Brake and down on Pearl Street. She identified that person as Raymond Cowles.

Now then there was one other as I remember it, one other piece of evidence connecting the defendant with the crime, and that was James Gaither's testimony of a conversation that he says took place in the Oneida County Jail sometime in November of this year, or excuse me, of 1973.

That is the sum and substance as I recall it of the Government's case.

Now what is missing from the Government's case? A few things do come to mind. Where is the money that was taken? Where is the other robber? Where is the red convertible? Why wasn't the red convertible placed to the defendant Raymond Cowles or someone whom he was associated with, either a relative or friend? Did it disappear in thin air? You heard Investigator Semione say no one has turned up a red convertible and no one reported a red convertible stolen, so it seems to me that the red convertible had to belong to one of the two persons in the robbery or their family or friends and could be traced to those people.

It would be my suggestion that perhaps the red convertible is the key to this case, once that is found the questions may be cleared up as to who did participate in this bank robbery. But that is a key

element, I think that is a key element that is missing in the prosecution's case. So I think there are some questions that might be legitimately asked that are still up in the air, still in a confused state.

Now because the testimony linking the defendant with this crime consists almost entirely of eye witness testimony, it is most important that you evaluate this testimony quite carefully in your deliberation.

Now let's consider some of the testimony that was given by the eye witnesses and see if there are any problems with that testimony.

Basically the eye witnesses testified about the presence or absence of a hat, I think you recall that testimony. As I recall the testimony Mr. and Mrs. Schultz who were in the laundromat said they were positive that this driver had a hat on, and I think you will recall that they very carefully described this hat as to color, as to width of brim, as to crown, as to what type of hat it was. All right, that is the Schultz' testimony on the issue of the hat.

Let's go inside the bank. There we find Jeffrey Potter and Eugene Blair were the only people in the

bank that saw the driver at all. Jeffrey Potter said that he got a view, Eugene Blair as you may recall we read his testimony, he was the man in the bank with the woman and the little boy, I believe it was, he saw the top and back of the head. Both Jeffrey Potter and Gene Blair said they didn't see any hat on this driver, he wasn't wearing a hat.

All right, so then let's take the other witnesses. Mrs. Palmer says definitely not wearing a hat. Mr.Eiss said he didn't know whether the fellow had a hat on or not. Now I think this is important, if the question to be resolved in this case were ladies and gentlemen can you determine beyond a reasonable doubt whether the driver of this car in front of the Marine Midland Bank was wearing a hat, I think you would have some considerable difficulty in making that determination based on the testimony.

Two other things about the hat. In the descriptions given to FBI Agent Dorton on the very day of the robbery, August 30, by Mr. and Mrs. Schultz, there is no mention of any hat in those descriptions, in fact you will recall Agent Dorton testifying that Mrs. Schultz never -- excuse me, Mr. Schultz never -- Mrs. Schultz never mentioned a hat on, or he thought Mrs. Schultz had mentioned a hat and Mr. Schultz didn't

mention a hat, but no where in the description given on the day of the robbery is there any mention of any hat.

Now let's take one other issue, because ladies and gentlemen the very fundamental important thing to be resolved in this case is how clear an image, how sharp an image of the driver of this blue Chevy did these witnesses perceive, because that is what we are talking about, it is that view that is important - not what happened later on. For example, did the witnesses pick out the defendant Raymond Leo Cowles out of a lineup because he resembled a photograph that was in the newspaper? It is in evidence, the composite that was in the newspaper shortly after the robbery.

Now the point I am making is the initial view, the only view these people had of the actual culprit at the bank is what we have to consider, not what we have to consider, what you have to consider. How good a view did they get? How clear an image did they retain in their mind so that later on they could identify somebody? That is the issue, it seems to me.

What about glasses? That is another question. All right, as I recall the testimony Mrs. Schultz said she observed tinted glasses, as I recall the

testimony Mrs. Schultz said there were glasses, regular lenses; Jeffrey Potter as I recall -- regular lenses, Mr. Eiss, he thought they were tinted and Charlotte Palmer the witness who saw a person driving the red convertible said that person was wearing glasses that had clear lenses.

Now why is that important? Well, because as FBI Agent Dorton, I believe, testified, he was our last witness before the defendant took the stand, he said that in the description given him by Mr. and Mrs. Schultz the day of the robbery and within an hour and a half or two hours of the robbery, both Mr. and Mrs. Schultz said that the driver of this car was wearing sunglasses.

All right, so we have a spectrum running from sunglasses, to tinted glasses, clear glasses. Now why is that important? Because if you look at a person and you take a fairly cursory look or not a look of minutes but a look of seconds, it seems to me that what you will notice about this person is was he wearing a hat or not, I think this would be an obvious thing that one would notice about a person whom they were asking -- were asked to identify later on, was he wearing a hat.

The second question, what did he have on his

face? Did he have glasses? All right, so sunglasses as opposed to clear lenses? To me you would be able to pick those out very quickly. The difference is quite distinct between sunglasses. There is a lineup picture in evidence and you will certainly take a look and I ask you to carefully view this picture, because this is very important, one person in that lineup appears to have sunglasses on, take a look at that person and then look at the rest of the people in the lineup and see what I mean that sunglasses stand out, it is an obvious distinction, trademark of a person's countenance if you observe them first thing you might notice is a hat, sunglasses and mustache, perhaps. We are not talking, ladies and gentlemen, about the length of a scar on someone's face or whether he had blue or hazel or green eyes, we are not talking about things that are difficult to distinguish or difficult to remember, we are talking about things that I would believe would be fairly obvious things to remember.

So there is testimony about that. All right. What about other distinguishing features? What about color of hair? Mrs. Schultz or her husband said she had the best view in his opinion and she said that the individual driving that car had reddish

highlights in his hair, that was her testimony. Now the defendant Raymond Leo Cowles, and you can look for yourselves, I don't believe has reddish highlights in his hair. No one else said anything about reddish highlights, but Mrs. Schultz who testified here before said she had a view for probably as long as anybody, if not longer, and she said she discerned obvious reddish highlights in the hair.

Now once again I would ask you to consider very briefly Mrs. Palmer's testimony. I think Mrs. Schultz said something about it was a sunny day and the sun shone and revealed these highlights. Mrs. Palmer testified that the driver of this red convertible the top is down, remember, and there it was a sunny day, same day, no reddish highlights, dark hair, no reddish highlights, so I think there is a question there, too.

Let's examine very briefly what descriptions were given by the various witnesses to the FBI. I think this is important because these are descriptions that were given on the day, the very day or the next day, in the case of Mr. Kiss, August 31, within a day of the actual occurance when this thing had to be as fresh in thier minds as it could possibly be.

Mr. Schultz testified, and I believe you recall his testimony, I don't recall him giving any description at all to the FBI of the driver, "I told the FBI that my wife had the better view." I believe that was his testimony, and you will recall that I asked him some questions about what he said on September 25, 1973, less than a month after this very occurance, and he said at that time that very definitely he did not volunteer any description of the driver to the FBI. That very definitely conflicts with his testimony, or excuse me, with thedescription that Agent Dorton said he did give. Agent Dorton said he did give a description on the date of the occurance. So someone's memory is a little faulty here, someone's recollection is in error, and you have to decide for the purposes of your deliberations

who that was, whether that error is important or not.

Now Mrs. Schultz says she gave a description, and she says something about the hat. No mention in the FBI summary about a hat by Mrs. Shultz.

Jeffery Potter testimony, inside the bank, he says that he gave no description whatsoever of the driver to the FBI the day of the occurrence. I think that is kind of important. If he had a sharp image, a clear image of the driver, it seems to me he would have told them about it, but he didn't.

What did Mr. Eiss say as his description? What did Mr. Eiss say the next day after the robbery? I think I can remember what he said. He said the man he observed was between 45 and 50 years old, a white male, wearing glasses, who looked like a million other people. I think he testified that that is what he told the FBI on August 31, 1973, the day after the robbery.

How clear an image did they perceive? I think Mr. Eiss' description would lead you to think that perhaps the image he got on that day wasn't that clear, wasn't that clear at all.

I think those are important things to consider

for your deliberations.

There are a couple of other things I will briefly talk about. One, the prosecution's theory apparently is that the driver of the car, or both robbers, apparently, went over to the Air Brake with this stolen or with the Louis Watson '65 Chevrolet, left it at the Air Brake and then somehow apparently separated, or at least someone, the driver, got into the red convertible and drove it out onto Starbuck Avenue where Mrs. Palmer observed this red convertible.

Now I think there is one question on that red convertible that bears some looking into. You recall Mr. Engle that -- said that when he observed the red convertible on the morning before any robbery had ever taken place, the top was up, you remember that testimony, the top was up on this convertible. Mrs. Palmer says that when she observed this red convertible, a red convertible, the top was down. Now why is that important? Well, I think it is important because if the prosecution's theory is that these two robbers who had just robbed a Marine Midland Bank and were in a car that was not theirs, and they had no permission to be in, went over to the Airbrake, left that car and got into a red

convertible, at least one of them did, why in heaven's name if they are in a hurry did they take the time to put the top of the convertible down? I mean, does that make sense? It just seems to me rather unreasonable, that if someone is in a hurry to get away, and you must remember the prosecution's theory is that they left the stolen car, just left it right in the Marine parking lot, why did they take the time or why did the driver take the time of putting this top down?

Not only that, but why would he put the top down which would expose him to a much clearer, better view then if the top was up and the side windows were up on this convertible? Would a driver who had just been involved in a robbery, would it make sense to do that? To me I think there is some question about it.

Now I would ask you to consider the testimony of Mr. and Mrs. Schultz, what happened on September 9, 1973 when photographs were shown to them. I think that the testimony is quite important in this case. You must remember this is eleven days after the actual occurence itself. What is the testimony? As I recall it, Mrs. Schultz is home and Mr. Schultz is home and DCI Investigator Semione comes to the

house. He has some photographs, and those photographs are in evidence and you can look at those photographs and evaluate their testimony on the basis of those photographs. He shows photographs first to Mrs. Schultz, and what did Mrs. Schultz say? When she testified on the stand, Mrs. Schultz says "I couldn't recognize anyone in those eight photographs, I couldn't pick out anybody as the driver of the car." Then she says she was asked "do you recognize anyone in there that is the type of the driver," and I believe she said she checked one photograph and she showed or she commented on that photograph, and that was a photograph of Dennis Charles Percell, who was obviously not on trial here today for any bank robbery. That was the photograph she said she selected. She was positive, ladies and gentlemen, she selected one photograph on that occassion, and you must recall this is the only photograph that she says she selected at any time, so I think this should be fresh in your mind, it is not a question of selecting ten or twenty photographs, it is one photograph and that was not of the defendant Raymond Leo Cowles.

Investigator Semione says that when he showed her the photograph she picked out first one photograph,

and that was Dennis Charles Purcell, and she said "this is the closest in resemblance," and then she picked out a second photograph and that was of the defendant Raymond Leo Cowles, she said "this one is possibly a second choice," or words to that effect. That was Investigator Semione I think testified to that. Quite a difference in testimony, I point out to you first, but more importantly, eleven days after the robbery Mrs. Schultz did not select the defendant Raymond Leo Cowles as being the driver of that getaway car, at best she said it was possibly a second choice.

Now you will be free to examine the photographs of both Dennis Charles Purcell and Raymond Leo Cowles, and I ask you to look at it, because in the photograph of Raymond Leo Cowles the individual portrayed is wearing a mustach and he does not have glasses, but he has a mustach and he has long hair, and I submit to you ladies and gentlemen if she couldn't pick him out of that photograph, I think that indicates clearly that there is a possibility of error in her identification, if she can't pick him out eleven days after the occurence, I think there is a real question as to her identification.

Furthermore, what did she say the reason she

couldn't pick him out? She said the reason she couldn't pick him out, as I recall, was because the image had gone out of her mind of this driver. I think you will recall that testimony. Well, I suggest, ladies and gentlemen, if the image had gone out of her mind on September 9, 1973, then that would lend considerable question as to whether or not she could identify later, anyone later on, and she said she identified a person out of the line up three or four days later. So I think there is quite a question about her identification of the defendant.

After all, in court is no problem, Mr. Lowe sits here, I sit here, the defendant sits here, there isn't anyone else to pick, I means she knows who Mr. Lowe is and she testified she knew who I was, so there is only one other person there to select, so I think the in court identification you should consider in light of that kind of procedure.

Alright. Briefly what did Mr. Schultz do on September 9, 1973? He was shown photographs. He says he picked out a photograph and said "I can't say this is the man, but it is the closer in resemblance," and Mr. Semione said that photograph was of the defendant Raymond Leo Cowles. Now we are not talking about, ladies and gentlemen, closest in

resemblence in this case, if at the end of your deliberations you find that the defendant was the closest in resemblence to any of the other pictures or people in the line-up, or photographs of the driver of the getaway car, then you should acquit him, you should acquit him because that is not the issue, it is not the question whether he resembles someone either closely or generally resembles him, we are talking about whether or not he in fact was the driver, and that is the question, whether the government has proved beyond a reasonable doubt that in fact he is the driver or was the driver.

Mr. Schultz says he didn't say that at that time, he said "I can't say it is the man, the closest resemblence." Now you may recall I asked him some questions about that picture that he selected, and you may recall that I read some questions that I had asked him back in September 25th, again of 1973. He said at that time that the individual in the photograph he selected was wearing glasses and was not wearing a mustach. That was his testimony. You may recall the time sequence here is that on September 13 is the line-up, September 9 he is shown a photographs, September 25 he is testifying, and I asked him those questions. Glasses, no mustach,

that is what Mr. Schultz said at that time.

You may recall I read some questions I asked him in November, and I asked him about the glasses and he said no, the individual was wearing glasses in the picture he selected. And I asked him this question, I said "are you as positive, Mr. Schultz, that the individual in the photograph you selected was wearing glasses as you are of the identification of Raymond Cowles?" He said "yes, I am."

Now he realized in his testimony here he was mistaken, the photograph, he was wrong. Is there any question as to whether he was wrong on the identification? He was wrong on the photograph, he said he was positive to me in November that he was right, and then I think this testimony would suggest there is some question about his identification.

Alright. Just briefly on the identification testimony. Jeffery Potter says he saw a side view, if you recall, I think the left side of his face from a distance fron the witness chair, I believe, to the first row of seats, something along this distance (indicating).

Mr. Eiss says that he saw the individual from a distance of 80 feet. He didn't demonstrate in the courtroom, but 80 feet is a fairly lengthy distance.

You recall Jeffery Potter gave no description and Mr. Eiss gave the description I told you about. So I think there is a question, ladies and gentlemen, a very serious question, as to whether or not there is a possibility of error in the identification testimony.

There have been many cases in the past where people equally positive as the people testified here stood up in court and said "yes, that is the man," and then discovered very tragically later on that they were wrong, that the man they identified was not in fact the guilty person, but someone else who looked alike or resembled that man.

I call your attention to that because the key it seems to me, the center issue in the cases identification.

I would ask you to look at the line-up picture, look at the photographs, look at the line-up picture carefully to see if any of the other individuals resemble the driver or the composit picture of the driver that was in the newspaper, or resemble the descriptions that were given by the witnesses. I think if you would look at the line-up picture carefully you will find there is an individual in there that Mr. Dumane said was about forty-some

years old, the first one on the left. Thereis also one, at least one, who is a blond. No one identified the driver as being blond haired. There is one with shoulder length black hair, a seventeen year old person, and the other two I believe had very short hair. So it seems to me that there is a real question as to whether or not five of the individuals had any resemblence, real resemblence to the description of the driver or to the composit picture in the newspaper.

There are one or two questions I would like to ask about the line-up. No. 1, why did certain individuals refuse to go in the line-up, as Agent Dumane of the FBI said, why did they refuse? What did they look like? Did they resemble the composit picture in the newspaper or the description of the driver? Why did they refuse if they had nothing to hide? I submit that it would be interesting to see what their physical make-up was and whether any of those people looked like the composit picture.

The other question I would like to ask about the line-up was why wasn't Dennis Charles Purcell in the line-up? He is the one Mrs. Schultz said was closest in resemblence to the driver of the car. You didn't hear Raynay Dumane read Dennis Charles

Purcell's name as being a participant in that lineup. Why wasn't he? Would it not have been more fair to have that person who was selected as being the driver, or at least being the closest in resemblance by one of the witnesses, why wouldn't it have been more fair to have him in the lineup? And what do these other individuals look like? Why do we maintain that the defendant in this case is the victim of honest -- we are not disputing the motives of these witnesses, honest, mistaken identification, there are several reasons why we do this. One is the testimony of the boys Wayne Prosser and John Johnson to the effect that they were in the white stationwagon on the morning of this robbery, Raymond Cowles was driving that stationwagon, that they were picked up on Court Street and then they made a trip which they described, and I think Officer Bombard showed you on the map where the lake was, Crystal Lake, and where Theresa was and where Glen Park was. In other words, that Raymond Cowles was driving a white stationwagon, a Chevy, I think it was testified to, and not any blue Chevy or red convertible on the morning of that bank robbery and was with those two boys.

Now let's examine very briefly, there is no

question, or at least there is no real dispute that Wayne Prosser was working the Sheriff's office that day, was washing cars, that he was met by John Johnson. I think you recall hearing Mr. Hefferon's testimony read in that that is what indeed was told to him by Wayne Prosser very shortly after the incident itself. That they went down Court Street and were picked up by John Johnson's brother and Raymond Cowles and then they proceeded out the Court Street Bridge, over the Court Street Bridge and out Leray Street toward the Seaway Shopping Center. I think that is what Mr. Hefferon said Wayne Prosser told him.

Now what is in question is the time. All right. I think Mr. Hefferon said Wayne said it was around noon or about noon, and Wayne said it was somewhere between a quarter of eleven and eleven o'clock they went on this trip. What is the key element on the testimony? I think in my mind I would like to suggest that one of the keys is being passed by an unmarked Sheriff's car belonging to the Jefferson County's Sheriff's Office on Leray Street. That places the people, Wayne, John Johnson, his brother, Raymond Cowles the defendant in a white stationwagon on Leray Street near a quarter to eleven or eleven

o'clock than it does at noon, because Officer Bombard testified that there were two Sheriff's cars detailed to that bank robbery. He described the route he took, and one may have come from another part of the town, but they both got to the bank at 11:00 or shortly thereafter. Knowing that Sheriff's car was on Leray Street that day is very important. I think that would place the defendant on the street at the time of the robbery, or shortly after, and would have made it physically impossible for him to drive over to the bank, get into the red convertible, driven that red convertible someplace. I think Mrs. Palmer said he made a left turn on Water Street. She didn't see him after that. He had to ditch the red convertible someplace, and I mean really hide it because it has never been found to this day, and then get into a white stationwagon and then get back over onto the Court Street area. I think that is a physical impossibility based on the testimony.

We would like to conclude my conclusion -- we would like to conclude my remarks, I would like to ask some questions that have not been resolved, and I think would tend to support the defense of innocence in this case.

If Raymond Cowles was the driver of the car and

involved in that bank robbery, where is the money, why hasn't it been traced to him or why hasn't any evidence whatsoever of the bank robbery been traced to him?

If Raymond Cowles was the driver of that getaway car, why are we hearing from somebody, his girlfriend I think he said, that he resembled a person that was photographed in the newspaper, and more importantly when he heard from another friend that the police thought that he resembled the composite picture in the newspaper and he was their list of suspects, why when hearing that, I think it was the first or second of September, did he stay around until September 10 when he was arrested? Why didn't he leave? If he was indeed the person who drove this getaway car and had at least a substantial share, I would think, of this money from the proceeds, why did he stay? Why didn't he run?

Ladies and gentlemen, if flight is some indication of guilt, fleeing from a scene of fleeing the area is some indication of guilt, it seems to me only logical that staying at your home or in the area when you know you are a suspect is some indication, is some evidence of innocence. I think that is an important question.

If he indeed was the driver, why did he stay?

Raymond Cowles has consistently maintained that he was innocent of this robbery. You heard testimony of the Special Agent Zawosky. You heard Mr. Semione's testimony. You heard Mr.Dumaine's testimony. He said he was not involved. He has denied any participation. With the exception of one witness, James Gaither who got up on the stand and said in words or substance that Ray Cowles told him during the course of a TV program, "hell, yeah, I did it, I am not going to tell them that," or "I am not going to tell anybody that." That is the sole testimony that Raymond Cowles ever admitted anything to do with this robbery.

Let's examine very briefly James Gaither. He is a bank robber, number one. He is a confessed bank robber awaiting sentence. James Gaither lied to the police in his own case initially, told them he wasn't involved, and then when he knew they had the goods on him he said "O.K., I did it," and confessed.

James Gaither said that there were five or ten conversations with Raymond Cowles and Raymond always denied that he was involved during the course -- I think he was in Albany County Jail -- denied that he was involved. All right. He was asked something about the trial and they talked about the trial, but

he denied he was involved in the robbery. Back to Utica, and on one occasion while they are watching TV, nobody could hear him, of course, low voices, nobody else could hear, Raymond makes these admissions.

Well, what was James Gaither's motive in securing these admissions? Was it curiosity? No, you heard him testify. "First I was curious, then I asked questions so I could help myself out." I think you recall that testimony. That was his motive, help himself out.

James Gaither was a worried man, he had been in jail, time was heavy, jail time was heavy. He had a wife and a small infant son on the outside, and he wanted to get to that wife and son. He told us, you heard him, ladies and gentlemen, that he would do anything within reason to go home, that all he wanted to do was go home. In fact you heard him say that he told me one day before he testified that he would give his right leg to go to his home and wife andchild. So faced with his dilemma, James Gaither acted. He knew he was coming up for sentence, he knew it was a bank robbery, he knew it was serious, he said "How can I avoid prison?" Well, here's my story, I will tell them Ray Cowles told me he was involved in a bank robbery in Watertown and I will hope for some deal, I will hope that I can get some help, and once again

no one else was present or heard this conversation, because they were in low voices, or did the conversation ever take place? How can we refute other than have the defendant deny? There is no evidence of it, it is not written down, no one else heard it, no one else was present, it is a fool proof scheme of Mr. Gaither's. How can he lose? No one can charge him with perjury because no one can really disprove the statement because it is gone, it is an oral thing, and if it occured it occured, but if it didn't, it didn't, no one will ever be able to prove that. He knew that when he gave that testimony.

James Gaither testified that the person he was concerned with was James Gaither, he didn't care about Raymond Cowles, and he said that on the stand,he wasn't concerned about Raymond Cowles. I suggest to you, ladies and gentlemen, that James Gaither told a big lie in a desperate attempt to keep out of prison himself. He wanted to sacrifice someone else so he could avoid prison. I sympathize with his plight, but I think you ladies and gentlemen will deplore the method he used to avoid prison.

I would also point out there are no other witnesses that came into this Court room from any jail. Raymond Cowles has been in jail, Watertown Jail,

Albany County Jail, been in the Oneida County Jail, no other inmates came forward and said Raymond Cowles told me he was involved, yes, he said he did it, no one else, just James Gaither who had the most to gain from this kind of testimony.

I think, ladies and gentlemen, the question is whether the prosecution has proved beyond a reasonable doubt that Raymond Leo Cowles was involved in this bank robbery, was the driver of the car. The question is not whether it was possible he was the driver or not, not whether it was even probable he was the driver, but the driver. The question is not whether he resembled closely the description of the driver, of the composite picture in the newspaper, the question is is he the driver beyond a reasonable doubt?

I submit there are serious questions, serious problems in this case that would indicate and strong reasons to believe that he was not, and I would ask you to reflect that reasonable doubt in your verdict by saying not guilty.

Thank you.

THE COURT: All right, we will take our luncheon recess at this point and we will resume at 2:00. Don't talk about the case, don't let anybody

* * * * *

alibi defense. He said he had only seen Stretch once since 1969. Is that the kind of a statement an innocent man would make?

Ladies and gentlemen, we have reviewed Mr. Cowles' statement on September 10, we have reviewed Mr. Gaither's testimony, we have reviewed the testimony of five eye witnesses everyone of whom says Cowles is the man and they say it positively.

Mr. Clary is curious and concerned about the $36,000 that is still missing and the man in the orange parka that is out there on the streets of Watertown somewhere, and we are, too. Don't let Cowles and his friend reap the rewards of this crime. We strenuously urge you to return a verdict of guilty.

THE COURT: We will take a very short recess.

(Thereupon a short recess was taken after which the hearing was resumed.)

THE COURT: Before beginning this charge, I want to add my thanks to those of the lawyers for your prompt attendance at each of our sessions despite the inclement weather and snow storms, and to express my thanks also for your patience with some delays that we have encountered, and to assure you that those delays were unavoidable and no one's fault.

It now becomes my function and duty to instruct you on the law that applies to this case, and it is your duty to accept the law as I give it to you in these instructions whether or not you agree with them. In short, I am the exclusive judge of the law.

Now just I am the exclusive judge of the law, you are the exclusive judge of the facts. You and you alone decide what weight, what effect and what value you give to the evidence. You decide or - whether or not you will believe a witness, and of course ultimately you decide the guilt or innocence of this defendant.

Now you are not to conclude from any rulings that I have made throughout this trial, or any questions that I may have asked, that I have any opinion one way or the other as to the guilt or innocence of the defendant. That decision is exclusively your function.

Now how do you go about finding the facts in your search for the truth? Finding the facts is merely a process by which you the jury consider the exhibits which have been received in evidence and the testimony of all of the witnesses on direct and on cross examination, sift out what you believe, weigh it in the scale of your reasoning powers and

common sense, and draw such conclusions as your experience and common sense tell you the evidence supports and justifies, and decide just where the truth lies in this case.

Now in this connection all evidence is of two general types, direct evidence and circumstantial evidence. Evidence is direct when the facts are shown by exhibits which are admitted into evidence or when sworn to by witnesses who have actual knowledge of what they have seen or what they have heard. For example, in this case we heard Mrs. Schultz testify it was a bright sunny day. That is direct evidence. We heard George Eiss testify that he kept his air conditioner on while he went into the bank. That is direct evidence. From those two bits of direct evidence, by applying your every day common sense, you infer that it was a hot day, August 30, 1973 at 10:30 in the morning it was hot. That is circumstantial evidence that you drew from the two facts that were in direct evidence, the sun shine, leaving on the air conditioning.

I am sure you all use that process in your everyday life. No greater of -- no greater degree of certainty is required when of evidence is circumstantial than when it is direct, for in either case

you must be convinced beyond a reasonable doubt before you can find the defendant guilty.

Now it is your memory of the evidence that controls, it is not the way I remember it nor the way the lawyers remember it. If your memory squares with what the lawyers told you when they summed up their version of what the evidence showed here, you may accept what they said. But if you have a different recollection of it, you are bound by your oath to reject their version of the evidence and to accept and rely on your own memory. And what I said as to the lawyers also applies to me.

Now I don't intend in this case to attempt to summarize the evidence. It hasn't been a complicated case. I watched all of you as the witnesses testified. I know you paid very careful attention to the evidence, and so the Court will rely on your memory of the evidence except here and there I may touch on it as I just did with Mrs. Schultz and Mr. Eiss simply to illustrate a point or to focus your attention on the problem involved.

Now it is your exclusive function to decide which witnesses you will believe, and this is so as to every witness, whether called by the Government or by the defense.

Now you are not to be influenced by the number of witnesses called by either side or by the number of documents received in evidence. Your concern is not with the quantity of the evidence, but with the quality of the evidence. The first test which you ought to apply in determining the trustworthiness of a witness is to measure what he says against your everyday common sense. You are not bound to believe unreasonable statements or to accept testimony that defies your common sense or insults your intelligence just because the statements are made under oath on a witness stand in a public Court room.

You saw the witnesses in this case. In deciding whether to believe a witness, you should consider his conduct and his manner on the stand. I saw you watching these witnesses with particular care as they were testifying. Obviously you were sizing them up. How did the witness impress you? A -- Was he or she being frank with you? Was he being evasive? Was the witnesses' version supported? Was the witness trying to conceal some of the truth? Was the witness just parroting answers or repeating a fabricated story? Did the witness have any motive to testify falsely? Is the witness interested of -- is he interested in the outcome of this case in any

way? How strong or weak was the witnesses memory? In short, can you rely on him, can you trust the witness. Did the witness show any bias or prejudice or hostility or friendliness for any party?

You ought to consider also the witnesses opportunity to know the facts about which he testified, and the probability or the improbability of what he said. How does the witnesses testimony add up when considered with all the other evidence? How far does his story check out? Are there any inconsistencies in the witnesses testimony, and if so, how important are they? Has the witness made any inconsistent statement on an earlier or prior occasion? And if so, how important are those inconsistencies? And in considering whether there is an inconsistency, you ought to consider not only what he said on the prior occasion but what he failed to say.

Now the witness Gaither testified that he had been convicted of a crime, the crime of bank robbery, that he had pled guilty to that. You should consider that fact in determining his credibility and the weight to be given to his testimony.

The defendant Cowles testified as a witness. He was not required by law to do so, and his appearance as a witness was entirely voluntary on his part. If

he had not testified, his failure to do so could not have been considered by you in any manner in determining his guilt or innocence, but having testified, the law requires that the testimony be judged and appraised by the same standards applied to the testimony of other witnesses, giving consideration, of course, to his background, to his personality, to his manner on the stand and to his natural interest to the outcome of this trial.

Now if you find that any witness has deliberately and willfully lied with respect to any material fact in his or her testimony offered at this trial, you may follow either one of two courses, you may accept as much of the witnesses testimony as you believe, or if you wish you can reject his entire testimony.

Now before discussing the crime charged here, I want to remind you that an indictment is a mere accusation, it is not evidence of the truth of the charge made, and you are to draw no inference of guilt from the mere fact that this defendant has been indicted. An indictment simply means that the defendant has been accused of a crime.

The defendant has denied the charges made against him both by his plea of not guilty and by his testimony on the witness stand.

Defendant has no burden of proof to sustain in this case, he is under no obligation to produce any evidence, any documentary evidence or even to call any witnesses. He is presumed to be innocent, and this presumption of innocence remains with him throughout the trial and during the deliberations of the jury. This presumption is overcome when and only when the Government establishes the guilt of a defendant beyond a reasonable doubt.

Now what do I mean by beyond a reasonable doubt? As the phrase implies, a reasonable doubt is a doubt that is based upon reason, a reason which appears in the evidence or in the lack of evidence. It is not some vague, speculative, imaginery doubt, nor a doubt based upon an emotion or sympathy or prejudice or upon what some juror might regard as an unpleasant duty. The Government is not required to prove a defendant's guilt beyond a -- beyond every possible doubt nor to an absolute or mathematical certainty, because such measure of proof is usually impossible in human affairs.

You should review all of the evidence as you remember it, sift out what you believe and discuss and listen, weigh and compare your view of the evidence with your fellow jurors. If that process

produces a solemn belief or conviction in your mind such as you would be willing to act upon without hesitation if this were an important matter of your own, then you may say that you have been convinced beyond a reasonable doubt. On the other hand if your mind is waivering or so uncertain that you would hesitate before acting if this was an important of your own, then you have not been convinced beyond a reasonable doubt and your verdict must be not guilty.

At the outset, I wish to point out that although the indictment here originally contained four counts, only Count I remains for your consideration. The Court and counsel have done that, we have eliminated these other Counts in the interests of getting rid of unnecessary complexity and simplifying the issues for your consideration in this case, because in fact there is only one transaction here. These matters were solely a matter of law and convenience, and in our effort to focus your attention on the real issues in this case, and you are not to draw any inference one way or the other the -- for the elimination of the earlier and other Counts.

In order that you may be guided in your

deliberations on Count I, I am going to hand your foreman a copy of the indictment. Now Count I you will notice names two defendants, Raymond Leo Cowles and John Doe, a person whose name is to the Grand Jurors unknown. You must render your verdict only with respect to the defendant Cowles. He is the only defendant on trial.

Although in considering his guilt or innocence you may have to determine the nature of the participation, if any, of the other defendant, John Doe.

Now Count I of the indictment charges that on or about August 30, 1973 at Pamelia, New York, Raymond Leo Cowles, the defendant on trial, and John Doe, a person whose name is to the Grand Jury unknown, by intimidation did take from the person and presence of Alice Kingsbury, Catherine Olszewski and Myrna Cauley about $35,640 in money belonging to and in the care, custody, control, management and possession of the Marine Midland Bank Northern, the deposits of which were then issued by the Federal Deposit Insurance Corporation.

In order to establish the charge contained in Count I, the Government must prove to your satisfaction beyond a reasonable doubt each of the following three elements: One, that the deposits of the Marine

Midland Bank Northern, Seaway Plaza Branch, Pamelia, New York, were insured by the Federal Deposit Insurance Corporation on August 30, 1973. There is no dispute in the evidence, and indeed there is a stipulation by the parties that those deposits were insured by the Federal Deposit Insurance Corporation on that date. So you have nothing to decide on that first element. That first element is agreed upon and conceded.

Two, the second element, that someone, this doesn't have to be the defendant, knowingly, willfully and intentionally took money which belonged to or was in the care, custody, control, management and possession of the bank from the person and presence of a bank employee, Alice Kingsbury, Catherine Olszweski and Myrna Cauley. Again there is no dispute in the evidence that John Doe here, the man in the orange windbreaker, entered the bank, held up the tellers with a gun and took money from the possession of the bank. Again the parties, the defense counsel in his summation conceded that someone robbed a bank.

The third element is that in taking the money the man who robbed the man actually intimidated a bank employee. Now when I say intimidation, I mean he must frighten or put the bank employee in fear. The fear

must arise from something that the person allegedly commiting the offense does rather than from timidity on the part of the victim. It is not necessary, however, that the victim become hysterical or show that she was frightened. A taking by intimidation must be established by proof of one or more acts or statements of the person allegedly commiting the offense which was done or made in such a manner and under such circumstances as would produce in the ordinary person fear of bodily harm, and I am sure you will recall the testimony with respect to the man with the gauze mask over his face, the windbreaker, vaulting over the counter, brandishing a gun, directing people around, directing Miss Cauley to fill the bag with money and then leaving.

You must also recall the description of the gun. However, actual fear need not be proved. Fear may be inferred from statements made and acts done by the person allegedly commiting the offense and from all the surrounding circumstances shown by the evidence in this case.

Here there is no dispute in the evidence that the defendant John Doe was armed with a gun and that he forced the teller to fill the bag with money. It is for you to decide whether the teller was

intimidated or frightened by those acts, and all the circumstances.

Now the Government here, it is for you to decide whether John Doe commited a robbery of the bank, whether all of the elements of that crime have been satisfied beyond a reasonable doubt just as I read them to you, whether all three of those elements were proved beyond a reasonable doubt.

Now if you find that they were, then you come to this defendant who is on trial here. If you find that they were not, drop your deliberations if you find that John Doe did not rob the bank in accordance with the law as I have just given it to you, drop your deliberations, you have nothing further to consider, and return a verdict of not guilty.

On the other hand, if you decide that John Doe did rob the bank in accordance with the law as I have given it to you, then you go on to consider the guilt of this defendant.

Now the Government doesn't charge here, nor does the Grand Jury, that this defendant personally robbed this bank himself. Well -- rather the charge is that he aided and abetted John Doe in commiting the robbery. Now in that connection the Federal law provides in pertinent part that whoever commits an

offense against the United States -- and robbing a bank where the deposits are insured is an offense against the United States -- or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principle. Now this is what we call abetting and aiding.

You will recall the testimony that a blue car occupied by a driver was sitting outside the bank, and that a man in an orange windbreaker and gauze mask came out of the bank, got into the car, slid down on the floor in the passenger side of the car and was driven away. Eye witnesses identified the defendant Cowles as the driver of the car. Now in order to convict the defendant as an aider and abettor, it is not necessary for the Government to show that the defendant Cowles personally robbed the bank. A person who aids and abets another to commit a crime is just as guilty of that crime as though he commited it himself. Accordingly you may find the defendant Cowles guilty of the charge contained in Count I if you find beyond a reasonable doubt that he aided and abetted John Doe in the commission of the crime charged here.

Before you can convict the defendant for aiding and abetting, however, you must find that the crime

was commited here by John Doe and that the defendant knew it and that he consciously associated himself with the criminal venture, with the intent that his conduct would aid in its success. In other words, here, that he would enable the robber to get away.

You must be convinced beyond a reasonable doubt that he was doing something to forward the crime, that he was a conscious, knowing participant rather than a mere bystander or spectator, that he had some stake in the success of the crime.

If you find that these factors were present beyond a reasonable doubt, then you may find that the defendant is guilty as an aider and abettor.

The key question for you in this case is whether the defendant Cowles was the man driving the car. Now the defendant testified that he was not the driver and he did not participate or have anything to do with the robbery, nor in deed was in -- nor indeed was he anywhere in the vicinity of that bank on that day. He swore that he was not present at the scene and he offered the testimony of John Johnson and Wayne Prosser to the effect that he was not in the vicinity of the bank but on Court Street in the center of Watertown at about the time of the crime. Thus evidence had -- has been introduced that the

defendant was not present at the time when and the place where this crime was allegedly commited. This is known in law as the defense of alibi.

You must bear in mind, however, that the defendant does not have to establish an alibi, because he has no burden of proof to sustain in this case and you cannot convict him unless the Government proves beyond a reasonable doubt that the defendant was present at the time and place where the alleged crime was commited.

In short, the burden of proving that he was there is on the Government. There was no burden on the defendant to prove that he was not there.

If after considering the evidence -- all the evidence -- you have a reasonable doubt whether the defendant was present at the time and place of the alleged offense, you must find him not guilty.

Agent Zawosky testified that he interviewed the defendant on the morning of September 11 -- September 10, eleven days after the commission of the crime, and that when asked the defendant stated that at 10:30 on the morning of August 30, 1973 he was at his girl's or his grandmother's house sleeping. He also denied that he was anywhere near the bank. You will recall the defendant's testimony here that at the time

about 10:30 or quarter to eleven in the morning he was on Court Street in the center of Watertown driving a white stationwagon accompanied by Stretch Johnson, John Johnson and Wayne Prosser and that they were on their way out of town for a swim at Crystal Lake.

Now it is for you to decide whether the defendant's statement to Agent Zawosky was true or false. If you find that they were false, you should ask yourselves whether he made false statements in an attempt to cast suspicion away from him, or in an attempt to mislead Agent Zawosky.

If you decide that the statements were deliberately false and that the defendant knew that they were false, then you can consider such false explanations as some evidence of the defendant's consciousness of guilt, of a guilty state of mind.

Now the Government has offered the testimony of eye witnesses who identified the defendant as the man seen in the driver seat of the getaway car. Each of these witnesses was positive of his identification of the defendant as the driver. That testimony should be considered by you, but it does not relieve you of your duty to consider the witnesses testimony carefully, and to reject the identification if you find

that it is not reliable.

Now the reliability of an identification by an eye witness obviously depends upon all of the surrounding circumstances. You should look into the relationship of the witness and the person observed. For example, if you know someone it is easy to recognize them, but if they are strangers then it is not so easy. So you ask yourselves did these witnesses know the driver of this car or where-- or were the witnesses strangers. Was the witness a mere bystander or a victim of the crime. Did the witness know that a crime was being commited or was taking place? Was the attention of the witness focused on the driver or was the witness preoccupied and distracted?

The opportunity of a witness to observe the driver of the car at the time of the incident is of very great importance in determining the reliability of the witnesses' identification. You should therefore consider all of the circumstances shown in the evidence which bear on the ability, the opportunity and the motivation of the witness to make a careful observation and to form and retain a definite image of the driver in his mind. You should thus consider such factors as the condition of the witnesses eye

sight, his age, his range of vision and whether or not his view was clear or obstructed, his mental faculties and his emotional state at the time of the observation. You should also consider the length of time the witness was able to observe the driver, the lighting conditions, the distance between the driver and the witness, any distinctive physical characteristics, facial expressions or mannerisms of the driver, and his attire and general appearance. In this connection you should weight to any description the witness gave of the driver before looking at any composite picture or photographs or viewing anyone in a lineup.

You should ask yourselves how their descriptions tally with the actual appearance of the defendant and if there were differences, how important were they?

There was evidence that all of the witnesses who identified the defendant on this trial also identified him on earlier occasions, either by giving a description to the FBI, or in the case of Mrs. Schultz, by assisting the artist in making a composite picture, or by selecting his picture from among a group of photographs, or by picking him out of a lineup of six men, or by pointing him out on a

prior trial, or by all of these procedures. The circumstances of those earlier identification procedures should be considered by you in determing the reliability of the witnesses identification upon this trial.

Thus as to the photographic or lineup identification, some of the factors you should consider are the lapse of time between the witnesses' initial observation of the driver of -- at the scene of the crime and when he viewed the photograph in the lineup, the time of day the viewing sessions were held and their duration, the witnesses' physical and emotional state at those times, the number of persons present at the viewing sessions, the number of photographs shown to the witness, and whether the defendant's picture was among them. The number of persons in the lineup, and whether they were of similar age, height, weight, color and race, dress and overall appearance. Whether the witness was able to identify the defendant as the driver at the time he viewed the picture and the lineup, and if so, whether his identifications were quick and certain or whether they were hesitant and uncertain, and whether the witness was able to identify the defendant at times prior to the viewing sessions.

You ought also to ask whether in the description he gave before viewing any photographs, composite picture or lineup matched the actual appearance of the defendant as you observed him here in this Court room.

The circumstances of the witnesses in Court I identification of the defendant as the driver of the car may also be considered by you in determining the reliability of the witness. Hear some of the factors are the lapse of time between the initial observation of the driver by the witness at the scene of the crime and his trial, and their intervening observations of him from photographs, lineups, composite pictures on earlier occasions. The witnesses observation that counsel -- the witnesses' observation at counsel table, the testimony of the witness on direct and cross examination as to the basis of his identification, and whether the witness was able to identify the defendant on previous occasions.

In short what you are concerned with here is whether these eye witnesses are identifying this defendant as the driver of this car on the basis of an image they formed at the time of the crime, or whether their identification is the result of some

suggestion intervening between the time of the crime and this trial.

You should therefore decide whether the witness is able to identify the defendant here in Court as the driver of the getaway car because of the image he formed from his independent observation of the driver of the time and scene of the crime, or whether the identification procedure is used either before or at the time that the witness viewed the photographs or the lineup of the defendant prior to trial were so suggestive as to give rise to a substantial liklihood of mistaken identification.

Consider all of the evidence. If you find that the Government has failed to prove beyond a reasonable doubt that the defendant Cowles was the driver of the getaway car and aided and abetted another in the robbery of the bank, you should find the defendant not guilty.

On the other hand if you find that the Government has proved beyond a reasonable doubt that the defendant Cowles was the driver of the car and aided and abetted another in the robbery of the bank, you should find the defendant guilty.

Now you are instructed that the question of possible punishment of the defendant in the event

of a conviction is of no concern of yours and you should not in any sense enter into or influence your deliberations. The duty of imposing sentence in the event of a conviction rests exclusively upon the Court. The function of the jury is to weigh the evidence in the case and determine the guilt or innocence of the defendant solely upon the basis of such evidence.

When you retire to the jury room, treat each other with consideration and respect, as I know you will. If differences of opinion arise, discussion should be dignified, calm, intelligent.

Your verdict must be based on the evidence and the law. The evidence which was presented in this case as you remember it and the law as given to you in this charge.

You are each entitled to your own opinion. No juror should acquiesce in a verdict against his individual judgment, nevertheless no one should enter a jury room with such pride of opinion that they refuse to change their mind no matter how convincing the argument of a fellow juror or jurors.

Discussion and deliberations are part of our demoratic jury process, and you should approach your

deliberations in that spirit. Talk out your differences. Each of you should in effect decide the case for himself or herself after thoroughly reviewing the evidence and frankly discussing it with your fellow jurors with an open mind and with a desire to reach a verdict. If you do that you will be acting in the true democratic process of the American jury system.

There are 12 of you on this jury, the alternates will be excused before you retire for your deliberations. Any verdict must be the unanimous verdict of all of you, and it must represent the honest conclusion of each of you.

I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of the jury to decide the issues submitted to you fairly and impartially and without fear or favor.

Now member of the jury, if you find that the Government has failed to establish the guilt of the defendant beyond a reasonable doubt, you should acquit him. If you find that the defendant has not violated the law you should not hesitate for any reason to render a verdict of not guilty.

But on the other hand if you find that the

Government has established the guilt of the defendant beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

When you retire to the jury room you will elect a foreman or forelady from among your number, and your foreman or forelady will return an oral verdict in open court of guilty or not guilty on Count I.

Are there any exceptions, gentlemen? If so, I will hear you at the bench.

MR. CLARY: I have one, Your Honor.

(The following proceedings took place at the bench out of the hearing of the jury.)

MR. CLARY: I would except to that portion of your charge that has to do with the exculpatory statement on agent Zawosky, what he actually testified to.

THE COURT: I note your exception.

MR. LOWE: The Government has none.

(The following proceedings took place in the hearing of the Jury.)

THE COURT: The alternate jurors are now excused until Tuesday morning at 10:15. Thank you very much.

(At 3:45 p.m. the Jury was sworn in charge of

the Marshalls to begin their deliberations.

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(4:27 p.m. the Jury returned to the Court room. Counsel and the defendant were present.)

THE COURT: I have your note. I will have the Reporter read you Wayne Prosser's testimony, then we will send the map in; I take it the map on the board is the one you want?

(The Reporter read back the testimony of Wayne Prosser.)

THE COURT: All right, you may resume your deliberations.

(The Jury returned to their deliberations.)

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(9:50 p.m. attorneys and defendant in the Court room without the Jury.)

THE COURT: Bring in the Jury.

(The Jury was returned to the Court room.)

THE COURT: I have your note stating that you are in disagreement. I am sorry, I can't accept that at this stage. You began your deliberations rather late in the day. You took two hours for dinner and you haven't really been working all that long. So the Court is going to sequester the Jury for the night and have you return in the morning,

at which time I will give you further instructions and you will then resume your deliberations.

Now don't talk about the case any further tonight. You have had a long hard day. Get a good rest and come back tomorrow morning and we see if we can't resume your deliberations, perhaps not being tired.

Good night. Return at 10:00 in the morning. The Marshall will bring you back. You will be under his tutelage. You will all be staying in a motel.

(Thereupon the jury was sequestered at 9:52 p.m.)

(The following proceedings took place out of the presence of the Jury.)

MR. CLARY: At this time I would like to make a motion on the record in behalf of the defendant to declare a mistrial and withdraw a juror on the grounds that it appears there is substantial disagreement of the jury, and that a unanimous verdict would not be a just and impartial verdict, and I think at this point a mistrial motion is in order.

THE COURT: Denied.

MR. CLARY: Exception.

(The jury returned to their deliberation on Tuesday, February 12, 1974 at 10:00 a.m.)

(The jury was returned to the Court room.)

THE COURT: I hope you had a good night's sleep and are prepared for your work today.

I have your note saying that you are in disagreement, but as I noted last night you hadn't really been working very long. You didn't get the case until sometime after 4:00, and then around 6:00 you went out and didn't come back back until 8:00, you were out for dinner, and you only had been working a couple of hours and you reported your disagreement, and that is not very long in a case of this importance, a case that has taken this long to try, all the number of witnesses that were here and the problems that we had, and you remember that in my instructions I said to you that the essential of the American jury system is jury discussion, the democratic process of talking out your differences, laying your ideas on the table, stating your reasons for your position, listening to the arguments of your fellow jurors and to their reasons, and see if you can thrash out your differences.

Now in a large proportion of cases absolute certainty cannot be expected.

Although the verdict must be the verdict of each individual juror and not a mere acquiesence in the conclusion of his fellow jurors, you should examine the question submitted with candor and with a proper regard and deference to the opinions of each other.

It is your duty to decide this case, if you can conscientiously do so. You should listen with a disposition to be convinced to each other's arguments. If much the larger number is for conviction, a dissenting juror or jurors should consider whether his or their doubt is a reasonable one when it makes no impression upon the minds of so many other jurors who are equally honest, equally intelligent, equally impartial, and who like yourself come here as representatives of the community with no axe to grind.

Now if upon the other hand the majority is for acquittal, the minority ought to ask themselves whether they cannot reasonably doubt the correctness of a judgment which was not concurred in by the majority. While undoubtedly the verdict of the jury shaid represent the opinion of each individual juror and it might -- it by no means follows that opinions may not be changed by conference in the jury room, the very object of the jury system is to

secure unanimity by a comparison of views and by arguments among the jurors themselves.

Now what I have just stated to you is based on an opinion of the Supreme Court of the United States granted many, many years ago, and in a situation like this where the Judge there told the jury substantially what I have told you here.

Now if you wish any of the testimony reread or any of the charges reread, the Court would be only too willing to do it if your foreman will send me a note, but I urge you now to resume your deliberations and listen to each other's views.

(Thereupon the jury retired to their deliberations at 10:15 a.m.)

(The following proceedings took place out of the hearing of the jury.)

MR. CLARY: Your Honor, just for the record I would renew the motion I made at 10:00 last night and except to the continuing to the -- of the jury deliberations.

THE COURT: Yes, the record ought to note that the Court does not know, except for the fact that there is a disagreement, and the number of those are -- the number of those disagreeing or dissenting I don't know which way the jury stands, whether it

holds out for conviction or acquittal the Court has no idea. So I deny your motion.

(Thereupon the recess of the Court was taken.)

(11:08 a.m. Court in session with the attorneys and defendant present and without the jury.)

THE COURT: Bring in the jury.

(The jury was returned to the Court room.)

THE COURT: I have the note from your foreman saying "We would like to hear Mrs.Palmer's testimony," and I have asked the Court Reporter to read it to you.

(The Reporter read the direct and cross examination of Mrs. Palmer to the jury.)

THE COURT: All right, you may resume your deliberations.

(Thereupon at 11:37 a.m. the jury returned to their deliberations.)

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(12:02 p.m. Court in session with the attorneys and defendant present in the Court and without the jury.)

THE COURT: Bring in the jury.

(The jury was returned to the Court room.)

CLERK OF THE COURT: Ladies and gentlemen of the Jury, have you agreed upon a verdict, if so, how do you find the defendant and who shall say for

Palmer.

C H A R L O T T E P A L M E R,

called as a witness in behalf of the Government, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LOWE:

Q Where do you live, Mrs. Palmer?

A Watertown, New York.

Q You are married, I gather?

A Yes.

Q Do you have any employment other than that of a housewife?

A No.

Q Have you any children?

A Yes.

Q What is your husband's occupation?

A Attorney.

Q Directing your attention, Mrs. Palmer, to August 30, 1973, at around 10:30 in the morning or thereabouts, do you recall where you were?

A Yes.

Q Where was that?

A I was going to the Seaway Shopping Center in Watertown, New York.

Q Were you going there for any particular purpose?

A I was taking my mother to the hairdresser.

Q Do you know where the Marine Midland Bank is at the Seaway Shopping Plaza?

A Yes.

Q And while you were with your mother that morning, did you go by the bank?

A Yes.

Q Did you observe anything that directed your attention when you drove up?

A Yes.

Q What was that?

A People were running toward the bank and there was a commotion, so I thought maybe someone had become ill, and I am a registered nurse, so after dropping my mother off, I went back to the bank thinking I could be of assistance, and I saw a police car was there and I went on.

Q In other words, you first made your observations of activities around the bank and then went to the hairdresser and dropped your mother off?

A That's right.

Q And then go back?

A Yes.

Q Did you then leave the shopping plaza?

A Yes.

Q Do you recall what road you went onto?

A I went back the same road, on Starbuck Extension, that I came on.

Q It is called the Starbuck Road?

A I don't know that it has a name. It is a new road. It is an extension of Starbuck Street.

Q Does that particular street run past the National Air Brake Company?

A Yes.

Q And once you got on that street, were you heading in the direction of the National Air Brake Company?

A Yes.

Q Are you familiar with a building known as the arena near the National Air Brake Company?

A Yes.

Q What is the arena?

A It used to be a sports arena. Now it is a garage.

Q Do you know by whom it is used?

A The National Air Brake Company employees park in there.

Q Is it just an open parking area?

A No, it is a closed garage.

Q Was there anything that occurred in connection with your own car when you were in the area of the arena?

A Yes.

Q What was that?

A As I was approaching the driveway, coming out of the arena, I saw him, there was a convertible car awaiting, a red convertible car waiting to go out. As I got to about a car and a half length from it, my car stalled, so the car proceeded ahead of me.

Q You say your car stalled on you when you were one and a half car lengths away from this driveway of the arena?

A Yes.

Q Had you been having trouble with your car?

A I did that day, yes.

Q And you say that at approximately that point you observed a red convertible?

A Yes.

Q And was the red convertible stopped at that moment?

A Yes.

Q Was it waiting for you to proceed on by?

A Yes.

Q Then your car stalled and what occurred?

A He drove on ahead.

Q Did you notice how many people were in the red convertible?

A One person that I saw.

Q And then after the red convertible pulled out in front of you, what happened next?

A My car started up immediately and I followed the convertible down approximately two blocks through two stop lights. I didn't go through two stop lights but I went by two stop lights.

Q All right. And the red convertible is in front of you during this period?

A Yes.

Q Did there come a time when the red convertible no longer was in front of you?

A Yes.

Q How did that come about?

A At the second stop light, there was a great deal of traffic and the red convertible was ahead of me, I would have pulled around him but there were no flashers he didn't have any signals, lights going, so I waited and he pulls left and I went up Water Street and I proceeded home.

Q Do you wear glasses, Mrs. Palmer?

A Yes, to read with.

Q Do you wear them when you are driving?

A No.

Q Did you have glasses on on this occasion that we are talking about?

A No.

Q Can you describe the person that you saw in the red

convertible that was coming out of the arena when your car stalled?

A He was a dark-haired young man with sideburns and he had a fairly round face, and he had glasses on, and I believe they were the newer type, rimless.

Q The newer type, rimless or rimmed?

A I am sorry, rimless.

Q Did he have a mustache?

A Yes.

Q And perhaps you said this before but what about the length of his hair?

A It was moderately long but nothing unusual, not shoulder length.

Q You described this as a red convertible. Was the top down or up?

A Yes. Down.

Q Is the individual, Mrs. Palmer, that you observed in that red convertible coming out of the arena at that time, in the courtroom now?

A Yes.

Q And where is he sitting?

A With Mr. Clary.

Q Is he sitting to Mr. Clary's right? You know Mr. Clary?

A To my left. Yes.

Q Is this the individual (indicating)?

A Yes.

MR. LOWE: May the record show the witness is identifying the defendant.

THE COURT: It may so indicate.

BY MR. LOWE:

Q Now did there come a time when you discussed the events of August 30th, that you were just telling us about with representatives of the police or the F.B.I.?

A Yes.

Q Did there come a time when you were shown any photographs of individuals by representatives of the police or F.B.I?

A Yes.

Q And do you recall when that would have been in relation to August 30th?

A I believe the photographs I was shown were about a week later.

Q And who exhibited those photographs to you?

A Mr. Semione handed the photographs to me to look at alone.

Q And where did that take place?

A At my home.

Q Did Mr. Semione call you on the telephone and make an appointment?

A A Mr. Donoghue called me up-- no, I am sorry, I am

confused. No one called me up that time.

Q Did Mr. Semione just arrive?

A He just arrived at the house, yes.

Q And what did he say to you when he arrived at your home?

A He asked me if I would look at these photographs and see if there was anyone there that I might have seen.

Q Had you prior to that occasion spoken to any officers about what you had observed at the arena?

A Yes.

Q Do you recall approximately how many photographs were shown to you by Mr. Semione?

A I am guessing at it. Around a dozen maybe, more or less.

Q A dozen, maybe, more or less?

A Yes.

Q Can you describe the manner in which Mr. Semione displayed the photographs to you?

A He handed them to me in a manila envelope and I went alone into my kitchen and looked at them.

Q Did you select any one of the photographs as being a picture of the individual you saw in the red convertible?

A I selected a photograph as the one resembling the person I had seen.

Q After making that selection, what did you do?

A I called Mr. Semione and handed him the photograph.

Q And what did he say at that point?

A "Thank you".

Q Did he tell you the name of the individual you had selected?

A No, he did not.

Q Any discussion at all about the one you had selected?

A No.

Q On any other occasion, Mrs. Palmer, were you shown photographs by any representatives of the police or F.B.I?

A No.

Q On any other occasion were you asked to go somewhere to view some individuals?

A Yes.

Q Who contacted you about that?

A Mr. Donoghue of the State Police.

Q And how did he contact you?

A Over the telephone.

Q What did he say to you then when he called?

A He asked me if I would come and view a line-up at the Sheriff's Department.

Q And when he told you that, did you know where the line-up was?

A Yes.

Q Did you go to the Sheriff's Office?

A Yes, I did.

Q Do you recall approximately when that would have been?

A About two weeks.

Q About two weeks after August 30th?

A About two weeks after August 30th.

Q Where in particular did you go in the Sheriff's Office?

A In an office on the second floor. They had a see-through mirror or a two-way mirror.

Q Was anyone else present in the room with you?

A Yes.

Q Do you know who they were?

A The other witnesses and two F.B.I. Agents.

Q Was there anyone else there?

A And an attorney.

Q An attorney?

A An attorney, yes.

Q At that time did you know any of the people you just referred to as witnesses?

A No, I didn't.

Q When you arrived were you given any instructions or advice by any of the police personnel?

A They explained to us that we were to go up single file and view the line-up. We were given slips of paper. If we saw someone that we recognized, were to put the

number of the person down on the paper and sign our name and hand it to the F.B.I. Agent. We could take as long as we wished to look at the line-up. We could go back if we desired. If we didn't see anyone there we were to do the same thing-- we were to say so.

Q Did anyone talk to you at all about the identities of the individuals you were looking at?

A No.

Q Did there come a time when you stepped up to the window and looked through it?

A Yes.

Q Were you able to make a selection as to the individual you had seen in the red convertible?

A I went to the window twice and made my selection.

Q So you stepped up to the window?

A Yes.

Q Observed and then stepped back?

A Yes.

Q And then stepped up again?

A Yes.

Q After you stepped forward the second time, what did you do?

A I wrote down the number on a piece of paper, signed my name and gave it to the F.B.I. Agent.

Q Was there any particular reason why you decided to take

the second look?

MR. CLARY: I object.

THE COURT: On what grounds?

MR. CLARY: Called for an opinion.

THE COURT: No. Overruled. I will allow it.

A I wanted to place the individual in the automobile under the circumstances that I had seen him, in my mind

Q In other words, when you stepped up to the window the first time you recognized one of the individuals?

A Yes, I did, but I wanted to make certain.

Q In any event, after the second time you stepped forward, I think you testified you wrote a number down?

A Yes.

Q And handed it to the gentleman who was handling the procedure?

A Yes.

Q Did he say anything to you at that time?

A No.

Q After you made your selection, did anyone say anything to you?

A No.

Q After you made your selection, what did you do?

A Returned to the back of the room and stood.

Q What transpired then as you stood in the back of the

room?

A Just waited for the rest of the people to finish.

Q What happened after they finished?

A They directed us not to discuss it with anyone and we left.

Q You left the building?

A And went home.

Q Did you talk to the other witnesses about the person that you had identified, his number or anything like that?

A No, we did not.

Q Perhaps I asked you this, but did anyone tell you the name of the individual you had selected in the line-up?

A No, they didn't.

MR. LOWE: Nothing further, Your Honor.

THE COURT: I am going to take a recess as I have to take a grand jury report. I'm going to excuse the jurors and rather than hold them here some time, ladies and gentlemen, I will excuse you from the courtroom for ten or fifteen minutes. Remember my instructions. Wait for all the evidence. Take a fifteen minute recess.

THE CLERK: Court stands in recess for fifteen minutes.

Proceedings, dated 11-21-73.
Charlotte Palmer for Government, Cross,
Read into Record.

(Whereupon at this point the jury retired from the courtroom and after a short recess, the proceedings were continued).

THE COURT: All right. Cross-examination.

CROSS-EXAMINATION

BY MR. CLARY:

Q Mrs. Palmer, I believe you stated that you drove to the Seaway Shopping Plaza with your mother?

A Yes.

Q There was no one else in the car, I take it?

A My daughter.

Q Your daughter was with you too?

A Yes.

Q Did you drop both your mother and daughter off at the hairdresser's?

A No, just my mother.

Q How old is your daughter?

A Seven.

Q She was with you as you left the Seaway Shopping Plaza?

A Yes.

Q Now do you know what time you got to the Seaway Shopping Plaza that day?

A It was between 10:30 and quarter of 11:00.

Q Do you have any recollection of how you know the time?

A My mother's appointment was at a quarter to 11:00.

Q So that at a quarter to 11:00, you were scheduled to be at the hairdresser's?

A Yes.

Q Is that located near the bank?

A Past the bank.

Q If you pass the bank it would be to the right or left of the bank?

A To the left, going to the left.

Q How did you go into the Seaway?

A Over Starbuck Extension.

Q So you would have come up Murray Street and right-turned into the Center?

A No. I came over Pearl Street and Starbuck Street.

Q You say you drove by the bank on your way to the hairdresser's?

A Yes.

Q At that point, what did you see?

A I saw people running toward the bank or towards the grocery store, I didn't know which, and I didn't stop at that point.

Q More than one person was it?

A Yes.

Q Do you have any idea how many people you saw running?

A No.

Q You then continued on your way?

A That's right.

Q What did you do then?

A I stopped and let my mother out and turned around and went back.

Q You immediately go back to the scene?

A Yes.

Q Or to the bank?

A To the bank.

Q What did you see when you got back there?

A I saw a police car.

Q What kind of police car did you see?

A I am sorry, I don't remember whether it was the State Police or Sheriff.

Q Was it a marked car or unmarked?

A That I can't be sure of.

Q Did you stop at the bank at all?

A I slowed up.

Q Did you see any police officers there?

A I saw-- yes, I recognized a plain clothes policeman.

Q Did you recognize who they were?

A No, just people I have known.

Q Any individual? Did you recognize them as officers from either the State Police or the Sheriff's Department?

A I can't-- I believe it was State Police, but I am not

certain really.

Q You are not sure?

A No.

Q And did you do anything else in the area of the bank?

A No. I slowed down, realized that whatever the situation was in hand and I thought it might be best to get out of the way.

Q Did you see more than one police car at the scene?

A No, I did not.

Q Just one?

A That is all I saw.

Q And was that parked right in front of the bank?

A Yes, it was.

Q You then went in which direction?

A I went back over the Starbuck Extension, Starbuck Avenue.

Q Mrs. Palmer, I show you what has been received in evidence as Government's Exhibit 1, and ask you if you can identify that?

A Yes.

Q Is that a photograph of the bank in question?

A Yes.

Q As you were driving coming from the hairdresser's to the bank, were you-- what lane of travel were you operating your car in? Would it have been right along

side the sidewalk?

A No, I was down further.

Q Farther away from the---

A (Interrupting) Away from the door.

Q And did you proceed parallel to the bank?

A Yes.

Q And past the bank?

A Yes.

Q So you didn't go into that lane?

A No, a car was there.

Q As you face this photograph and passing the bank, you were going from left to the right?

A Yes, that's right.

Q Is the Starbuck Extension further down to the right of the photograph?

A Yes.

Q All right. Now I believe you stated you drove over the Starbuck Extension to Pearl Street?

A Yes.

Q In the vicinity of the Air Brake Company?

A Air Brake on Starbuck.

Q And the Air Brake on Pearl and Starbuck?

A That's right.

Q How far south from the shopping center over to the arena on Starbuck Avenue?

A Probably three or four long blocks.

Q Less than a mile?

A I guess so.

Q And you told us earlier that you were having trouble with your car that day?

A Yes.

Q Had it stalled out before you got to the---

A (Interrupting) Yes.

Q You say it started out on the street where you first saw this red convertible?

A On Starbuck Avenue.

Q How far were you away from the red convertible when you stalled?

A About a length and a half of a car.

Q And a car length is how many feet, do you judge?

A I don't know.

Q You could have been as far from me now when your car stalled, from the red convertible?

A Well approximately.

Q About this distance (indicating)?

A Maybe.

Q Maybe further or closer?

A I don't think I was any further.

Q Was this red convertible coming out from your left or your right?

A It was coming from the right.

Q Your right?

A Yes.

Q Where was it coming from?

A The Starbuck Arena driveway.

Q And did you see it come out the driveway?

A It was in the driveway coming out.

Q You saw it in motion?

A It was waiting for me.

Q My question is, when you first saw it, was it moving or standing still?

A He just came to a stop.

Q Had you seen it moving?

A I saw him stopped.

Q O.K. And your car had been stalling and this car proceeded ahead of you; is that right?

A That's right.

Q Now did you see anyone else in the car?

A No.

Q Other than the driver?

A No.

Q Was he wearing a hat?

A No.

Q He was not. Could you see at the top of this convertible, I think you told us it was down?

A Down.

Q Could you see into the car?

A I don't know, I didn't look in the car. I was not that--

Q But you didn't see anyone else in the car?

A No.

Q When this car made a right turn in front of you, did it accelerate rapidly or make a normal turn?

A Normal.

Q Did not go fast?

A No.

Q Did you follow the car for some distance?

A Yes, I did.

Q And he had maintained the speed, under the speed limit?

A Yes.

Q And were you maintaining a distance between the cars?

A Yes.

Q So it didn't make what we call a jack-rabbit start and speed down Starbuck Avenue?

A No.

Q Did it stop for both traffic lights?

A Yes.

Q Were those stop signs?

A Stop lights.

Q Were they blinking red lights or traffic lights?

A No, they are traffic lights.

Q Did you happen to look at the license plate?

A No, I didn't.

Q What did you notice about the red convertible? Did you notice for example, was it a hot rod car?

A I really-- I believe it was hot rod. The only thing I noticed was that the top was down and it was such a hot day that I thought it must be awfully hot in that car. I didn't notice the license plate or anything like that.

Q Do you mean the top was down?

A Everything was down.

Q Windows were down?

A Yes.

Q At the first time you observed the individual driver, did you have a frontal view or side view?

A I had a frontal view.

Q You were proceeding in this direction (indicating), and he is now at a right angle; is that correct?

A Yes, he looked at me directly.

Q Did he look at you on one occasion?

A I beg your pardon?

Q I say, did he look at you on one occasion?

A Yes.

Q Then did he look the other way?

A Yes.

Q Then proceeded on?

A Yes.

Q Do you know how long he looked at you, would you judge for us?

A Probably ten, fifteen seconds. I don't know.

Q Then I believe you said-- let me ask you this, did you notice the tires, whether they were white or wire?

A No, I did not.

Q Did you notice whether it was a new license plate?

A No, I didn't.

Q Did you notice the color of the top?

A The top was down.

Q Could you see any of the top, the color?

A Not that I noticed.

Q Was it a canvas top?

A I didn't notice.

Q Do you know what the individual was wearing? You see any of his clothes?

A No, I didn't.

Q Now the car as you testified proceeded at a rate of speed within the speed limit ahead of your vehicle?

A That's right.

Q And how far away were you from that car?

A Right directly in front of me.

Q Did the individual in the car ahead look behind, ever

look back?

A In the convertible?

Q Yes.

A No.

Q So you got one frontal view of this individual and then he proceeded along?

A Yes.

THE COURT: Did he have a hat on?

THE WITNESS: No he did not.

BY MR. CLARY:

Q You went down what street?

A Starbuck Street back to Pearl.

Q Did you make a turn on Pearl Street?

A On Pearl, yes.

Q In which direction?

A I went right on Pearl.

Q Where did you go? Did the convertible make a right turn?

A Yes he did.

Q Where did the convertible go then?

A When we came to the light at Water and Pearl, we had to stop there, and he turned left and went up Pearl Street, and I proceeded to my home.

Q Let's me. Water and Pearl. How many blocks did you follow the red convertible?

A About two blocks.

Q And was there anything unusual about the turn that the red convertible made to the right?

A Yes. I would probably have gone around him on the other side, but there were no flashers, he didn't have a signal going.

Q He didn't put the signal on?

A No.

Q In your opinion was the turn normal?

A Yes.

Q He didn't wheel his tires, did he?

A No.

Q Take off fast?

A No, not that I know of.

Q How about the turn to the left down on Pearl Street?

A No, except he didn't have his flashers on.

Q But he was going at a normal rate of speed?

A Yes.

Q And did you proceed directly home after that, Mrs. Palmer?

A Yes, I did.

Q Do you have any idea what time it was when you were following this red convertible?

A I arrived home at exactly 11:00 o'clock because the radio was on in the car and the news came on, and I

remember the news.

Q Now this individual you said, that you described, had rimless glasses on; is that correct?

A To my recollection.

Q Were they sunglasses?

A No.

Q Were they clear?

A I believe so.

Q They were ordinary glasses except that they did not have rims?

A That is what I remember.

Q So they didn't have tint or dark shade?

A I don't remember. I would have noticed the tint because it was such a sunny day.

Q But your testimony is that they were not?

A They were not.

Q How about the color of his hair? I think you said dark?

A Dark.

Q Was it red?

A No, I wouldn't--- dark.

Q Black or brown?

A Between black and brown.

Q Did you see any red tinges or shades in the hair?

A No.

Q Now, Mrs. Palmer, you were shown some photographs, I

believe you stated by Mr. Semione; is that correct?

A That is correct.

Q And now did the individual in the photograph you selected have a mustache on?

A No.

Q How about glasses?

A I don't believe so.

Q But you are certain he did not have a mustache on?

A I am pretty certain.

Q And you stated, I believe, that you were given about twelve photographs?

A Between twelve and you know, around twelve I would guess.

Q Were you ever shown photographs on any other occasion?

A No.

Q Do you recall now when you were shown these photographs?

A It was about a week after the robbery.

Q And when you made your observation through the viewing glass of the line-up, you observed how many individuals on the other side?

A Six.

Q Did any of the individuals other than the one you selected, resemble the driver of the vehicle?

A There were similar colorings and so forth.

Q Did any of those individuals have blonde hair?

A I believe there were some. Maybe one.

Q Maybe one?

A Maybe.

Q Could it have been two?

A Maybe. Fair hair.

Q And the individual that you saw in the red convertible certainly didn't have blonde or fair hair, did he?

A No.

Q How about glasses? Were there any individuals in the line-up that had glasses?

A Yes.

Q And were there any individuals that had rimless glasses?

A I believe so.

Q How many?

A I believe there were at least two.

Q How about sunglasses?

A No.

C No one had sunglasses on?

A No.

MR. CLARY: I should like this marked.

(Photograph marked as Defendant's Exhibit I for identification)

BY MR. CLARY:

Q I show you what has been marked as Defendant's Exhibit I for identification, Mrs. Palmer, and ask you if you could identify that?

A Yes.

Q Is that a fair and accurate photograph of the individuals in the line-up that you saw on September 13, 1973?

A Yes.

MR. LOWE: Are you offering it?

MR. CLARY: I would like to offer it.

MR. LOWE: No objection.

THE COURT: Received.

(Defendant's Exhibit I for identification received in evidence)

BY MR. CLARY:

Q Would you take another look, Mrs. Palmer, at the photograph and I ask you if there is any individual in that photograph with sunglasses on?

MR. LOWE: I object. The exhibit speaks for itself, Your Honor. I object to the question.

THE COURT: No, I will let her tell us what it is that appears in that picture.

THE WITNESS: There is one here, but I don't remember any.

THE COURT: Do you think there are people in that picture who have sunglasses on?

THE WITNESS: Yes, there is one.

BY MR. CLARY:

Q And you are referring to the person on the far right?

A Yes.

Q The person that you saw in the red convertible doesn't have sunglasses on, does he?

A No.

Q There is a person, the second from the right, that has glasses on?

A Yes.

Q Are those rimless glasses?

A Well, I better get my glasses out.

Q O.K.

A They could be.

Q They are hard to tell?

A They are hard to tell from this photograph.

Q And do you see the individual in the photograph with blonde hair?

A Yes.

MR. CLARY: I believe that is all I have.

MR. LOWE: No redirect, Your Honor.

THE COURT: All right, thank you.

THE WITNESS: Thank you.

(Witness excused)

MR. LOWE: The Government calls George Eiss.

G E O R G E E I S S,

* * * * *

Original

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
: ss.:
COUNTY OF ONONDAGA)

GEORGE H. LOWE, being duly sworn, deposes and says:

1. I am an assistant to James M. Sullivan, Jr., United States Attorney for the Northern District of New York.

2. On August 16, 1974, I personally served a copy of the attached "Appendix for Appelle" upon Lee Clary, Esq., attorney for the Appellant.

George H. Lowe
GEORGE H. LOWE

Sworn to before me this
20th day of August, 1974.

Richard K. Hughes

RICHARD K. HUGHES
Notary Public in the State of New York
Qualified in Onondaga County
My Commission Expires March 30, 19 75